

EVIDENTIARY HEARING  
BEFORE THE  
CALIFORNIA ENERGY RESOURCES CONSERVATION  
AND DEVELOPMENT COMMISSION

In the Matter of:	)	
	)	
Application for Certification	)	Docket No.
for the El Segundo	)	00-AFC-14
Modernization Project	)	
_____	)	

EMBASSY SUITES  
1440 EAST IMPERIAL HIGHWAY  
EL SEGUNDO, CALIFORNIA 90245

THURSDAY, FEBRUARY 20, 2003

9:05 a.m.

Reported by:  
James Ramos  
Contract No. 170-01-001

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

COMMITTEE MEMBERS PRESENT

Robert Pernell, Presiding Member

HEARING OFFICER AND ADVISORS

Garret Shean, Hearing Officer

E.V. "AL" Garcia, Advisor to Commissioner Pernell

STAFF AND CONSULTANTS PRESENT

David Abelson, Senior Staff Counsel

James W. Reede, Jr., Project Manager

Amanda Stennick

Michael Fajans

Mark R. Hamblin

PUBLIC ADVISER

Roberta Mendonca

APPLICANT

John McKinsey, Attorney,  
Livingston and Mattesich

Ron Cabe, Project Manager  
David Lloyd, Secretary  
El Segundo Power II LLC  
NRG Energy, Inc.

Tim E. Hemig, Manager, Environmental Services  
NRG Energy, Inc.

Tim Murphy

Terry German

INTERVENORS

Richard G. "Nick" Nickelson

INTERVENORS

Bob Perkins  
Michelle Murphy  
Murphy/Perkins

Mark Hensley, City Attorney  
City of El Segundo

Karl H. Berger, Assistant City Attorney  
Burke, Williams and Sorensen, LLP  
City of El Segundo

James Hansen, Director  
Community, Economic and Development Services  
City of El Segundo

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

## I N D E X

	Page
Proceedings	1
Opening Remarks	1
Introductions	1
Overview	2
Topics - Uncontested	3
Applicant	3
Exhibits	3/5
CEC Staff	5
Exhibits	5/9
Topics - Contested	14
Socioeconomics	14
CEC Staff witnesses A. Stennick, M. Fajans	15
Direct Examination by Mr. Abelson	15
Exhibits	15/33
Cross-Examination by Ms. Murphy	16
Cross-Examination by Mr. Perkins	23
Applicant testimony and exhibits	34/34
Land Use	34
City of El Segundo - statement	35
Exhibits received 2/19/03	35
City of El Segundo witness J. Hansen	38
Questions by Committee	38
CEC Staff witness M. Hamblin	38
Direct Examination by Mr. Abelson	48
Cross-Examination by Mr. McKinsey	61
Cross-Examination by Mr. Hensley	68
Redirect Examination by Mr. Abelson	83
Intervenors witnesses M. Murphy, B. Perkins	
and R. Nickelson	69
Direct Testimony	70
Exhibits 1 and 2	79/92
Exhibit 3	84/92

## I N D E X

	Page
Topics - continued	
Land Use - continued	
Landscape Map/Photo Discussion	85
Applicant declaration testimony and exhibits	92/93
CEC Staff testimony and exhibits	93/94
Public Comment	98
Michelle Murphy, Intervenor	98
Schedule	102
Closing Remarks	104
Adjournment	104
Reporter's Certificate	105

## P R O C E E D I N G S

9:05 a.m.

PRESIDING MEMBER PERNELL: Good morning.

This is a continuation of the El Segundo hearing.

My name is Commissioner Pernell; I'm the Presiding Member. Commissioner Keese is the Associate and is unable to be here this morning.

To my right is my Advisor, Mr. Garcia, Al Garcia. And to my left is our Hearing Officer, Mr. Shean. Mr. Shean will be conducting the hearing this morning. And at this time I'd like to turn the hearing over to Mr. Shean.

HEARING OFFICER SHEAN: Good morning.

Thank you, Commissioner. If we could have the parties state their appearance, beginning with the applicant, please.

MR. MCKINSEY: John McKinsey for El Segundo Power II, LLC, the applicant.

MR. ABELSON: David Abelson, Senior Staff Counsel for the Energy Commission Staff.

MS. MURPHY: Michelle Murphy, Intervenor.

MR. NICKELSON: I'm Nick Nickelson, Intervenor.

MR. PERKINS: Bob Perkins, Intervenor.

1               PRESIDING MEMBER PERNELL: Welcome,  
2 everyone.

3               HEARING OFFICER SHEAN: And we have our  
4 Public Adviser, Ms. --

5               MS. MENDONCA: Roberta Mendonca, Public  
6 Adviser.

7               PRESIDING MEMBER PERNELL: Welcome, Ms.  
8 Mendonca.

9               HEARING OFFICER SHEAN: At the  
10 conclusion of yesterday's hearing we advanced to  
11 9:00 commencement of the last day of hearings.  
12 We're going to go through the uncontested matters,  
13 take those by declaration and do any other  
14 housekeeping matters. And then we'll move on into  
15 socioeconomics and land use.

16              What I think we're going to do initially  
17 here, unless -- first of all are there any  
18 comments or questions by any of the parties before  
19 we proceed?

20              Okay. What we'll do is just go  
21 alphabetically through the -- actually I'm going  
22 to revise that. Why don't we just have each party  
23 introduce and offer in bulk their testimony on the  
24 uncontested items. And if you want to, for the  
25 applicant, rather than reading everything in your

1 appendices, just identify the appendices of your  
2 additional direct testimony, and I think that will  
3 be sufficient for the record, given that these are  
4 uncontested.

5 MR. MCKINSEY: The one here I want to  
6 make sure so we don't miss a subject matter  
7 area --

8 HEARING OFFICER SHEAN: I have a little  
9 checklist here.

10 MR. MCKINSEY: -- our testimony by  
11 declaration for the following issue areas is in  
12 the following appendices. Appendix C has our  
13 cultural resources testimony by declaration.  
14 Appendix D has our geological and paleontological  
15 resources testimony by declaration.

16 Appendix E has our hazardous materials  
17 testimony by declaration. Appendix F has our --  
18 excuse me -- appendix I has our socioeconomics --  
19 I'm sorry, that's also not -- those are the two  
20 areas we still have to revisit.

21 Appendix J has our traffic and  
22 transportation testimony by declaration. Appendix  
23 L has our waste management testimony by  
24 declaration. Appendix M has our soil and water  
25 testimony by declaration.



1           On appendix N, which is our alternatives  
2       area, I don't think that at this point we had  
3       inserted the other issues of alternatives  
4       yesterday, or actually mostly on Tuesday we  
5       addressed the particular alternative. But the  
6       remainder of our testimony by declaration for all  
7       other issues related to alternatives is contained  
8       within appendix N, and it's testimony by  
9       declaration. It includes some written testimony.

10           Appendix O contains our facility design  
11       testimony by declaration. Appendix P contains our  
12       reliability testimony by declaration. Appendix Q  
13       contains our transmission line safety and nuisance  
14       testimony by declaration.

15           Appendix R contains our transmission  
16       system engineering testimony by declaration.  
17       Appendix S contains our worker safety testimony by  
18       declaration. And appendix T contains our  
19       testimony by declaration that pertains to the  
20       general conditions of certification, the subject  
21       matter we often call compliance.

22           And then finally the declaration of Mr.  
23       Cabe is contained within our -- the written  
24       declaration by Mr. Cabe is contained within our  
25       initial written testimony that applies to all

1       these issue areas.

2               HEARING OFFICER SHEAN: All right, that  
3 looks to me as if you got them all.

4               MR. REEDE: Appendix V, as in Victor,  
5 you didn't call out.

6               MR. McKINSEY: Appendix V contains our  
7 declarations, the only one that would relate to  
8 these issue areas is Mr. Cabe's declaration. And  
9 that one I referred to. It contains all the other  
10 declarations of the witnesses that have appeared  
11 in all the other issue areas, or the two issue  
12 areas we're about to cover.

13              MR. REEDE: Okay.

14              HEARING OFFICER SHEAN: Okay, is there  
15 objection to admission of the enumerated  
16 appendices by the applicant?

17              MR. ABELSON: No objection.

18              HEARING OFFICER SHEAN: Hearing none,  
19 it's admitted.

20              Okay, we'll go to the staff now.

21              MR. ABELSON: On all the topics that  
22 have been discussed staff and the applicant are in  
23 agreement. Our testimony related to that is  
24 contained in a combination of the final staff  
25 assessment and the direct written testimony.

1           Of course, with the understanding that  
2           the biology issue, the applicant obviously has  
3           proposed particular conditions that we, of course,  
4           we've said that we don't agree with those.

5           But in all the other topic areas that  
6           Mr. McKinsey has identified there is no contest.  
7           I don't believe we addressed these topic areas  
8           that are uncontested any further in our response  
9           written testimony, but I would like to confirm  
10          that with the Project Manager, Mr. Reede.

11          MR. REEDE: Good morning, Commissioner  
12          Pernell and Hearing Officer Shean. I might add  
13          that there was an additional modification to  
14          condition certification visual-2 that was raised  
15          last night that there was no opposition to, which  
16          is contained in staff's response to direct written  
17          testimony.

18          And I did not hear air quality condition  
19          C-5 which dealt with the emission reduction credit  
20          listing that had been agreed to. I just didn't  
21          hear it.

22          MR. MCKINSEY: Correct. And air quality  
23          condition C-5 is agreed to by the applicant. And  
24          that was in our rebuttal testimony, I believe,  
25          where we indicated that.

1 MR. REEDE: Thank you.

2 MR. MCKINSEY: I would point out, your  
3 testimony does cover a lot of these issue areas.  
4 I mean --

5 MR. REEDE: Yes, we have a listing  
6 starting on page 38 of our direct written  
7 testimony that lists all of the areas.

8 However, our direct written testimony  
9 did not reflect the fact that air quality C-5 had  
10 been agreed to; nor does it reflect that in our  
11 response to direct written testimony we had  
12 proposed a modification or addition to visual  
13 condition 2, which establishes a landscape  
14 committee, which the applicant agreed to last  
15 night.

16 However, everything else is agreed to  
17 between the applicant and staff.

18 MR. ABELSON: And Officer Shean, for  
19 your benefit, basically the bulk of that, the vast  
20 majority of that is either in the FSA or the  
21 direct written, with the two exceptions that were  
22 just called out a minute ago.

23 (Off-the-record discussions.)

24 MR. ABELSON: It's unclear to me, it was  
25 my intention in referring, Officer Shean, to our

1 direct testimony of January the 22nd that they  
2 incorporate by reference agreed-to conditions that  
3 had previously been filed and docketed.

4 I think the direct written may actually  
5 do that. But to the extent that it does not, let  
6 me call to your attention then and ask that these  
7 also be moved into the record. The certain  
8 response to comments that the staff filed on  
9 November 1, 2001. A document to Commissioner  
10 Pernell from Mr. Reede dated December 13th,  
11 entitled El Segundo Power Redevelopment Project,  
12 agreed-to conditions of certification.

13 PRESIDING MEMBER PERNELL: What year was  
14 that?

15 MR. ABELSON: That was December 13,  
16 2002. A subsequent memo a couple weeks later on  
17 December 31st to Commissioner Pernell from Mr.  
18 Reede entitled, El Segundo Power Redevelopment  
19 Project, second set of agreed conditions of  
20 certification.

21 And finally, a memo from Mr. Reede to  
22 Mr. Pernell -- all of these have been docketed --  
23 dated January 6, 2003, entitled, El Segundo Power  
24 Redevelopment Project, second response to comments  
25 and errata to final staff assessment on land use.

1 I believe all of these are incorporated  
2 by reference in our direct written testimony. But  
3 if they are not, we would tender them into the  
4 record at this time.

5 HEARING OFFICER SHEAN: Okay, is there  
6 objection to admission into evidence of the items  
7 enumerated by the staff?

8 Hearing none, they're admitted.

9 Let me just indicate, my understanding  
10 is the December 31st submittal of the second set  
11 of agreed-to conditions is correct but for now  
12 what, three things? AQC-5, is that right?

13 MR. REEDE: Correct.

14 HEARING OFFICER SHEAN: Okay.

15 MR. REEDE: AQC-5, --

16 HEARING OFFICER SHEAN: Vis-2.

17 MR. REEDE: -- Vis-2, --

18 HEARING OFFICER SHEAN: And another  
19 modification to --

20 MR. REEDE: And also land-1, because  
21 land-1 was corrected in staff's direct written  
22 testimony.

23 HEARING OFFICER SHEAN: My recollection,  
24 too, there was another Vis modification that had  
25 been requested, I believe either by the City of

1 Manhattan Beach or the City of --

2 MR. REEDE: Yes, there was some --

3 HEARING OFFICER SHEAN: -- El Segundo  
4 and it --

5 MR. REEDE: -- wording that was in the  
6 December 31st document.

7 HEARING OFFICER SHEAN: It has been  
8 incorporated, you think?

9 MR. REEDE: Yes, it has been  
10 incorporated.

11 HEARING OFFICER SHEAN: All right.  
12 Well, we'll double-check that.

13 MR. PERKINS: I appreciate that. You're  
14 absolutely right, there was some language changes  
15 requested, and I know there was verbal agreement  
16 to do it And I frankly don't remember whether it  
17 was captured in December 31st, and I appreciate  
18 checking it.

19 Without exception I think Mr. Reede's  
20 absolutely right.

21 HEARING OFFICER SHEAN: I think so, too,  
22 the keeper of the keys on that? We could ask you  
23 to publish a last, final, agreed-to set. Maybe  
24 it's just a matter of the particular ones we're  
25 talking about here, so you don't have to republish

1 the whole document. I'll let you choose how and  
2 whether to do that. So that we believe, all the  
3 parties and the Committee believe we're operating  
4 on a final set. Understood from the staff side?

5 MR. REEDE: Pardon me?

6 HEARING OFFICER SHEAN: That you will  
7 republish a final set that incorporates what we  
8 think the final set of conditions are that  
9 incorporate these changes. The Committee is  
10 asking the staff to do that.

11 MR. REEDE: So you want another pack of  
12 conditions of certification?

13 HEARING OFFICER SHEAN: Doesn't have to  
14 be the whole thing. What I just indicated was it  
15 could either be the individual conditions that  
16 have been changed, or if you choose, at your  
17 discretion, it can be the whole package.

18 MR. REEDE: I'll look at my work  
19 schedule and decide.

20 HEARING OFFICER SHEAN: All right.  
21 Okay, with that, we have, if I understand  
22 correctly, all the declarations from the applicant  
23 and the staff, and all the testimony that we have  
24 from the intervenors who are present, has already  
25 been admitted into evidence.



1           As far as I know our record is now  
2       complete but for the topics of land use and  
3       socioeconomics.

4           MR. PERKINS: Yeah, that's our  
5       understanding. And for that matter, the testimony  
6       of the City of Manhattan Beach and the City of El  
7       Segundo, I believe, has also been admitted into  
8       evidence.

9           HEARING OFFICER SHEAN: It has.

10          MR. REEDE: I do not see the City of El  
11       Segundo's attorney here, sir.

12          HEARING OFFICER SHEAN: You have not?

13          MR. REEDE: No, I do not, sir.

14          HEARING OFFICER SHEAN: Okay. I think  
15       since --

16          MR. REEDE: We have all land use persons  
17       here.

18          HEARING OFFICER SHEAN: Well, I'm  
19       thinking what we should do is we could begin with  
20       socioeconomics, because the parties calling the  
21       socioeconomic issue are present. And --

22          MR. REEDE: Well, it's not 9:30 yet,  
23       that's the only problem.

24          PRESIDING MEMBER PERNELL: At 9:30 we  
25       were going to the land use.

1 MR. ABELSON: Yeah, I think we can keep  
2 it open was the suggestion the other day, in the  
3 event that someone does wander in after the fact,  
4 we'll still be presumably doing land use and we  
5 can drop back to socioeconomics, if needed. But  
6 the people --

7 HEARING OFFICER SHEAN: My suggestion is  
8 to take them --

9 MR. REEDE: Well, the City of Manhattan  
10 Beach is not here.

11 HEARING OFFICER SHEAN: -- in the  
12 reverse order since the parties who requested the  
13 socioeconomic -- do I have this correctly --

14 MR. REEDE: Well, one of the parties is  
15 not here, Hearing Officer Shean.

16 HEARING OFFICER SHEAN: The  
17 socioeconomics issue was called by Murphy/Perkins  
18 to cross-examine the staff witnesses. That party  
19 is here. The witness is here. There's no reason  
20 not to proceed because it won't prejudice any  
21 other party because no other party asked --

22 MR. REEDE: In the City of --

23 HEARING OFFICER SHEAN: -- that they be  
24 present.

25 MR. REEDE: -- Manhattan Beach's

1       rebuttal testimony --

2               HEARING OFFICER SHEAN:   Okay.

3               MR. REEDE:  -- they have requested to  
4       cross-examine, also, if I recall correctly.

5               HEARING OFFICER SHEAN:  All right.

6       Well, then we'll just --

7               MR. REEDE:  Start out, and when they get  
8       here they'll catch up.

9               HEARING OFFICER SHEAN:  Sure.  Why don't  
10       we at least call the witness and we'll get  
11       underway.

12               PRESIDING MEMBER PERNELL:  For what  
13       topic?

14               HEARING OFFICER SHEAN:  For  
15       socioeconomics.

16               MR. ABELSON:  Staff witness you want?

17               HEARING OFFICER SHEAN:  Yes, please.

18               MR. ABELSON:  Yes, staff would call  
19       Amanda Stennick, please.

20               MR. REEDE:  And Michael Fajans.

21               MR. ABELSON:  I'm sorry, and Michael  
22       Fajans, as well.

23               (Pause.)

24               MR. ABELSON:  If you'd like, Officer  
25       Shean, I'll just go ahead and set the context in

1 terms of what they sponsored and --

2 HEARING OFFICER SHEAN: Just after  
3 they've been sworn in.  
4 Whereupon,

5 AMANDA STENNICK and MICHAEL FAJANS  
6 were called as witnesses herein, and after first  
7 having been duly sworn, were examined and  
8 testified as follows:

9 HEARING OFFICER SHEAN: All right, Mr.  
10 Abelson, please go ahead.

11 MR. ABELSON: Thank you.

12 DIRECT EXAMINATION

13 BY MR. ABELSON:

14 Q Ms. Stennick and Mr. Fajans, are the two  
15 of you the staff team that worked on the  
16 socioeconomic portion of the final staff  
17 assessment, the direct written testimony and  
18 staff's response testimony that was filed on  
19 February the 22nd of this year?

20 MS. STENNICK: Yes.

21 MR. FAJANS: Yes.

22 MR. ABELSON: And have you reviewed that  
23 material as it was written and as it was filed and  
24 docketed?

25 MS. STENNICK: Yes.

1 MR. FAJANS: Yes.

2 MR. ABELSON: Do you have any changes  
3 you wish to make to that?

4 MR. FAJANS: No.

5 MR. ABELSON: To the extent that it has  
6 factual information in it, are those facts correct  
7 to the best of your knowledge?

8 MR. FAJANS: Yes.

9 MS. STENNICK: Yes.

10 MR. ABELSON: And to the extent that it  
11 expresses opinion do they express your  
12 professional opinions to the best of your  
13 knowledge?

14 MR. FAJANS: Yes, it does.

15 MS. STENNICK: Yes.

16 MR. ABELSON: With that, the witnesses  
17 are available for cross-examination.

18 MS. MURPHY: I guess I'm asking all the  
19 question of either or both of you, I don't know  
20 who's the expert in what.

21 CROSS-EXAMINATION

22 BY MS. MURPHY:

23 Q What happened to property values in,  
24 say, Love Canal? Are you aware of what happened  
25 to property values in a highly impacted polluted

1 area?

2 MR. FAJANS: Not in precise detail. I  
3 have not studied a case study on that one.

4 MS. MURPHY: Could you speak in sort of  
5 generalities then about what happens in areas  
6 where severe pollution is known to happen? Do new  
7 property values go down?

8 MR. FAJANS: There certainly have been  
9 instances in cases of severe pollution where  
10 property values go down.

11 I have studied for other projects,  
12 looked at some case studies, myself, as well as  
13 literature studies of those things. Frankly, I'm  
14 surprised in the literature how little property  
15 values seem to have been affected in some cases  
16 where they, for example, properties have been  
17 virtually adjoining Superfund sites.

18 But there certainly is some evidence of  
19 effect.

20 MS. MURPHY: Is there any evidence in  
21 the literature of property values going down when  
22 there are irrational fears of pollution, not  
23 necessarily next to a Superfund site, but, you  
24 know, rumors and feelings that there's high  
25 pollution and property values go down despite not

1 no actual pollution, because there's no place in  
2 America with no actual pollution, but despite not  
3 a huge actual pollution?

4 MR. FAJANS: There are certainly  
5 attitudes. You know, there's various approaches  
6 to studying impacts. There's appraisal studies;  
7 there's attitudinal studies; and there's  
8 statistical studies.

9 Attitudinally there is certainly a  
10 perception, but it is not generally borne out by  
11 the statistical analysis.

12 MS. MURPHY: I'm sorry, is that -- it's  
13 not responsive and I don't quite get -- understand  
14 what your answer is to my question, which is  
15 sometimes there are hysterical property value  
16 drops unrelated to the actual facts or not?

17 MR. FAJANS: I wouldn't define them as  
18 hysterical ones, no. I mean there may be some,  
19 you know, temporary drops, but not significant  
20 ones.

21 MS. MURPHY: Okay. This is a  
22 hypothetical but it's based on what actually  
23 happened Tuesday night when I went to my book club  
24 group. And the women there started talking about  
25 incidences of cancer. They were blaming -- it's

1       because I ask people to come to these hearings and  
2       they didn't come because they don't think it's a  
3       power plant, they think it's Chevron.

4               But they think that our town, Manhattan  
5       Beach, is severely impacted by cancer-causing  
6       agents. And they were willing to admit that the  
7       power plant probably has something to do with it,  
8       too.

9               And they were talking in terms of, one  
10      of them said she goes to a painting class and half  
11      of them have had cancer of one kind or another,  
12      talking about skin cancer. I mean, this is not  
13      scientific evidence.

14              But is it possible that sort of thing  
15      might lead to a diminution of property values if  
16      the people start talking and believing that there  
17      are serious health risks --

18              MR. ABELSON: I'm going to object, asked  
19      and answered. The question was posed can people's  
20      mental thoughts about something even not borne out  
21      by the facts cause property values to drop. And  
22      the witness' answer was there's some anecdotal  
23      evidence in the literature; it's not been  
24      supported by statistics.

25              MS. MURPHY: Okay. Are you aware of the



1       McMartin case in Manhattan Beach?

2               MR. FAJANS:  No, I'm not.

3               MS. MURPHY:  It's not a pollution case,  
4       but it is an hysterical case --

5               MR. REEDE:  That was child abuse.

6               MS. MURPHY:  -- as far as I'm concerned.

7       It was a case of child abuse in Manhattan Beach --

8               MR. REEDE:  Oh, okay, yes, I do recall  
9       it now.

10              MS. MURPHY:  Right.  At one point I  
11       think something like 11 daycare centers were  
12       closed down and there was, you know, allegations  
13       of -- so, -- well, I guess what I'm saying, and  
14       perhaps I'm testifying, is that Manhattan Beach  
15       has been known to be hysterical in the past.  And  
16       the possibility for hysteria exists perhaps more  
17       there, I'm not sure why, than other places.  
18       Except maybe it has to do with recently Manhattan  
19       Beach was listed on some study as being the eighth  
20       most expensive place to live in the United States.  
21       And perhaps that leads to hysteria?  I don't know.

22              (Laughter.)

23              HEARING OFFICER SHEAN:  Ms. Murphy, if  
24       you can bring that broadbrush down to something  
25       that hones in on the issues related either to --

1 MS. MURPHY: Okay, I guess --

2 MR. FAJANS: That is an interesting  
3 thesis, but --

4 (Laughter.)

5 MS. MURPHY: Yes, yes. I guess what I'm  
6 saying, what I would most like to ask you is it  
7 possible that the pollution effects of this power  
8 plant could cause property values to drop at my  
9 house, which borders the power plant, or more  
10 generally in Manhattan Beach?

11 MR. FAJANS: I don't believe so in this  
12 case, because if there was a national park next  
13 door that was being converted to a power plant  
14 perhaps there would be an impact, if the physical  
15 impacts, the views, the air quality, noise, et  
16 cetera were not mitigated.

17 But being that this is just one of quite  
18 a few what people would call locally undesirable  
19 land uses in the vicinity, and this is an  
20 incremental change to one that exists, I don't  
21 think that there would be a real impact.

22 MS. MURPHY: Okay. And your basing the  
23 mitigation on the AQMD credits, or is that what  
24 you're talking about when you talk in terms of  
25 mitigation?

1 MR. FAJANS: No, I'm just say, you know,  
2 yeah, if the conclusion is that, you know, I'm not  
3 talking about the credits, specifically, but if  
4 the conclusion is that the physical impacts are  
5 mitigated, and I think this is generally the case  
6 in the literature on property values, that if  
7 there are not physical impacts, there are not  
8 property value impacts.

9 MS. MURPHY: In other words, air  
10 pollution is not generally considered a  
11 precipitous factor to drops in property values?  
12 It's more views and other things, is that what I'm  
13 hearing you say?

14 MR. FAJANS: Views and noise and, you  
15 know, if there -- I would imagine if there was a,  
16 you know, absolute and significant difference in  
17 air quality in a specific area, that might become  
18 a factor. But I think the views and the noise and  
19 the perceptual impacts are more significant.

20 MS. MURPHY: Has there been any trends,  
21 are you aware of any trends that air pollution is  
22 becoming more on the radar of property values, or  
23 not?

24 MR. FAJANS: I'm not aware of them --

25 MS. MURPHY: If there are any?

1 MR. FAJANS: -- if that's the case.

2 MS. MURPHY: Okay. I guess I have no  
3 further questions.

4 MR. PERKINS: I'd like to ask a couple,  
5 if I may.

6 CROSS-EXAMINATION

7 BY MR. PERKINS:

8 Q Do you have any sense of the size of the  
9 southern California Air Quality Management  
10 District?

11 MR. FAJANS: Yes, that it's multiple  
12 counties.

13 MR. PERKINS: Los Angeles County being  
14 one of those multiple counties?

15 MR. FAJANS: Yes, certainly.

16 MR. PERKINS: Are you aware that the  
17 staff has concluded that but for mitigation the  
18 changes to this power plant would cause  
19 significant cumulative impacts in the area of  
20 Manhattan Beach and surrounding neighborhoods?

21 MR. FAJANS: Yes.

22 MR. PERKINS: Is there a variation in  
23 prices of property over Los Angeles County from  
24 one neighborhood to another?

25 MR. FAJANS: Certainly.

1           MR. PERKINS: Is it extreme in the sense  
2 of at least ten to one from highest to lowest?

3           MR. FAJANS: I would imagine so.

4           MR. PERKINS: And is there a correlation  
5 between property values and the degree of  
6 pollution in the neighborhood in which the  
7 property sits?

8           MR. FAJANS: It's not clear to me that  
9 there is. There might be some correlation, but it  
10 would be, you know, if one was doing a factor  
11 analysis of trying to determine values, it would  
12 be relatively low on the list.

13          MR. PERKINS: You're not aware of any  
14 such factor analysis that's been done, is that  
15 correct?

16          MR. FAJANS: No.

17          MR. PERKINS: I asked the question in  
18 such an awkward way that you can't tell what your  
19 answer meant.

20                I got you to say no and I'm not sure  
21 whether you meant no, I -- anyway, so I'll try it  
22 again.

23                Are you aware of any such factor  
24 analysis that's been done to break out  
25 specifically air pollution contributions to the

1 property values of residential land?

2 MR. FAJANS: Specifically air quality,  
3 no.

4 MR. PERKINS: But you are aware that it  
5 is generally true that the air quality near the  
6 coast is a lot better than the air quality in the  
7 eastern parts of Los Angeles County?

8 MR. FAJANS: Yes, I am.

9 MR. PERKINS: And you are aware that  
10 it's generally true that the property values near  
11 the coast are a lot higher than the property  
12 values in the eastern part of Los Angeles County?

13 MR. FAJANS: Generally, but I think, as  
14 we indicated in our testimony, not always the  
15 case.

16 MR. PERKINS: If you were told that the  
17 mitigation of the air pollution impacts from this  
18 power plant would not be particularly local, but  
19 rather would be mitigated throughout the Air  
20 Quality Management District, then would you agree  
21 that whatever the impact of this power plant on  
22 lands, whatever that value is, it's not going to  
23 be mitigated?

24 MR. ABELSON: I'm sorry, the question is  
25 unclear.

1 MR. PERKINS: I'll try it again. It's a  
2 fair criticism.

3 Let's take it in pieces. You know,  
4 because you've read it in the staff's assessment,  
5 that but for the mitigation this power plant  
6 change would cause a significant air pollution  
7 increase in the immediate vicinity, that at  
8 Manhattan Beach -- excuse me, El Segundo and  
9 Hawthorne, right?

10 MR. FAJANS: I thought it was a  
11 significant cumulative --

12 MR. PERKINS: Significant cumulative,  
13 that's absolutely right.

14 MR. FAJANS: And I don't know if you're  
15 accurately summarizing staff's position about  
16 whether it would be significant in Manhattan Beach  
17 or at the sampling station in Hawthorne.

18 MS. MURPHY: Forty times more  
19 significant in Manhattan Beach than at the  
20 sampling station.

21 HEARING OFFICER SHEAN: Well, the  
22 witness answered the question, so unless you're  
23 moving to strike it. And it's fairly close to the  
24 evidence in the record.

25 MS. MURPHY: Yes, I was just responding

1 to the objection.

2 HEARING OFFICER SHEAN: Okay.

3 MR. PERKINS: All right, now, let's see  
4 if I can do this in pieces for you. If the  
5 proposed mitigation tends to reduce pollutants in  
6 the inland and eastern portions of the South Coast  
7 Air Quality Management District more than it does  
8 reduce pollutants in the immediate vicinity of the  
9 power plant, would you agree that that, in itself,  
10 does not change the property value effect on homes  
11 as a result of the extra pollution locally from  
12 the power plant?

13 MR. FAJANS: That was pretty twisted,  
14 and I'm not sure --

15 MR. PERKINS: Really?

16 MR. FAJANS: -- I really --

17 MR. PERKINS: Okay, let me try it --

18 MR. FAJANS: -- I really understand --

19 MR. PERKINS: -- let me try -- I'm going  
20 to move my hands and draw --

21 MR. FAJANS: -- the question --

22 MR. PERKINS: -- pictures and stuff. If  
23 you've got -- I want to draw, and I'll draw it so  
24 everybody can see it --

25 HEARING OFFICER SHEAN: Yeah, but then



1 we have a hard time getting that in evidence.

2 MR. PERKINS: I know you do, but it's a  
3 hypothetical question --

4 HEARING OFFICER SHEAN: Well, --

5 MR. PERKINS: Unless you're telling me  
6 you will not allow it?

7 HEARING OFFICER SHEAN: I'm just going  
8 to ask you to try to reframe it one more time.

9 MR. PERKINS: All right.

10 HEARING OFFICER SHEAN: If you assume,  
11 as a hypothetical, --

12 MR. PERKINS: All right.

13 HEARING OFFICER SHEAN: -- this and  
14 this, then --

15 MR. PERKINS: All right. Okay, let's  
16 start with this hypothetical. We got a small  
17 community; it's maybe a six-mile radius community.  
18 Small compared to the South Coast Air Quality  
19 Management District or Los Angeles County.

20 MR. FAJANS: Yeah.

21 MR. PERKINS: And in the middle of that  
22 community, whatever the existing baseline --  
23 excuse me -- and in the middle of that community  
24 there is a significant cumulative pollution  
25 impact.

1           And then the only other thing that  
2 happens is that in communities far away from that  
3 impact, in the eastern portion of Los Angeles  
4 County, there is a reduction in the pollution  
5 level. Okay?

6           In your opinion is that reduction in the  
7 pollution level in the inland communities affect  
8 the property values in the impacted community, the  
9 smaller six-mile radius community?

10          MR. FAJANS: I would say no because I'm  
11 not an expert on air quality --

12          MR. PERKINS: No, I'm not asking --

13          MR. FAJANS: -- but I've --

14          MR. PERKINS: -- you to assume -- to  
15 figure that -- excuse me, I'm not asking you to  
16 know that those are true facts, I'm just saying if  
17 they were, what happens to the property values.

18          MR. FAJANS: I think there would be very  
19 little impact.

20          MS. STENNICK: I think we've established  
21 through the response to your testimony that  
22 property values can't be correlated to one  
23 significant cause.

24          There are a number of issues that  
25 impact, or that cumulatively affect property

1 values. Proximity to schools, the types of  
2 schools, other amenities in the neighborhood.  
3 Certainly air quality could be attributed as being  
4 a factor in property values, but from the studies  
5 that we've looked at it can't be isolated as the  
6 only cause.

7 MR. PERKINS: So let me ask you,  
8 collectively, since you answered that  
9 collectively, whether this is a true statement.  
10 And I quote from your final staff assessment, page  
11 4.8-11. Quote: Negative impacts can be generated  
12 if there are significant adverse impacts such as  
13 air quality."

14 Is that true?

15 MR. FAJANS: Yes.

16 MR. PERKINS: Okay. I want to ask you  
17 about another portion of your -- I'm sorry, and do  
18 you both agree with that? Is that a joint answer?

19 MS. STENNICK: Yes.

20 MR. PERKINS: In your FSA regarding  
21 socioeconomics you expressed the following about  
22 cumulative impacts, quote, page 4.8-12: There are  
23 ongoing projects that would occur with the El  
24 Segundo Power" -- excuse me, I misread -- "There  
25 are ongoing projects that would occur concurrently

1 with the El Segundo Power Redevelopment project,  
2 should it be approved."

3 Do you remember saying that?

4 MR. FAJANS: Yes.

5 MR. PERKINS: What are those projects  
6 that you were aware of?

7 MR. FAJANS: This was written some time  
8 ago and it's hard for me to recall. I mean  
9 certainly there's ongoing, you know, commercial  
10 and residential development of varying scales  
11 within the County.

12 I'm aware there's also plans, even  
13 though I don't know if they're still going on or  
14 on hold, to expand and modify the airport. There  
15 are transportation projects; there may be other  
16 public works projects that I don't recall at this  
17 point.

18 MR. PERKINS: Okay.

19 HEARING OFFICER SHEAN: We're not trying  
20 to hide the ball from the witness, either. You  
21 want to mention the Chevron MTBE conversion.

22 MR. PERKINS: Right. I don't know, were  
23 you folks aware that in the area of air pollution  
24 there is a proposed concurrent project to do some  
25 conversions at Chevron which will, if I may

1       paraphrase it, increase some of the very same  
2       pollutants that this plant will be creating. Were  
3       you aware of that at the time you wrote --

4               MR. FAJANS: I don't recall.

5               MR. PERKINS: Did you consider or were  
6       you informed as to the possible air pollution  
7       effects of either that Chevron, first of that  
8       Chevron change?

9               MR. FAJANS: Not specifically, but,  
10       yeah, I have reviewed the ongoing testimony in the  
11       air quality area.

12              MR. PERKINS: Okay. And were you  
13       informed of the cumulative pollution impact which  
14       might be caused by the expansion of LAX?

15              MR. FAJANS: Again, I'm assuming that  
16       that is covered within the air quality analysis.

17              MR. PERKINS: If it's in the air quality  
18       analysis you would have read it? And if it  
19       wasn't, then you're not aware of studies about  
20       that, is that correct?

21              MR. FAJANS: Correct.

22              MR. PERKINS: Is that true of both of  
23       you?

24              MS. STENNICK: Yes, that's true.

25              MR. PERKINS: All right, I have no more

1 questions of these witnesses.

2 HEARING OFFICER SHEAN: Thank you. Any  
3 redirect?

4 MR. ABELSON: No.

5 HEARING OFFICER SHEAN: Anything from  
6 any other party?

7 All right, we'd like to thank the  
8 witnesses for coming, and you're excused.

9 MR. MCKINSEY: Hearing Officer Shean, I  
10 can't remember if we, when we began socioeconomics  
11 did we enter in our written declaration?

12 HEARING OFFICER SHEAN: I don't think we  
13 have, as a housekeeping --

14 MR. PERKINS: Yeah, I think these have  
15 all been kind of reserved on both sides of it.

16 MR. REEDE: Right. You did not enter  
17 socioeconomics, nor land use.

18 HEARING OFFICER SHEAN: Okay, well,  
19 we're going to do that now. We had the live  
20 witnesses and all right, let's do this first. As  
21 to the witnesses that just appeared, is there  
22 objection to the entry into evidence of the  
23 staff's testimony appearing in the FSA and the  
24 staff direct and rebuttal testimony into evidence?

25 All right, hearing none, it's admitted.

1           And from the applicant's side, do you  
2           have an appendix number?

3           MR. MCKINSEY: Appendix I of our written  
4           testimony contains our socioeconomics testimony by  
5           declaration and reference.

6           HEARING OFFICER SHEAN: Is there  
7           objection to admission into evidence? Hearing  
8           none, it's admitted.

9           All right, our last topic is land use.  
10          Let me ask the City of El Segundo to state its  
11          appearance for the record, please.

12          MR. REEDE: I'll take care of the  
13          microphone.

14          (Pause.)

15          MR. HENSLEY: I'm Mark Hensley, City  
16          Attorney for the City of El Segundo.

17          MR. HANSEN: I'm James Hansen, the  
18          Director of Community, Economic and Development  
19          Services for the City of El Segundo.

20          HEARING OFFICER SHEAN: Mr. Hensley, Mr.  
21          Hansen, welcome, good morning.

22          PRESIDING MEMBER PERNELL: Welcome.

23          HEARING OFFICER SHEAN: I guess I'll ask  
24          just for our court reporter before you depart, if  
25          you would, if you have a business card, please

1 provide him with one.

2 All right. On this item we have the  
3 staff testimony and a request by the City to  
4 present its direct testimony, which is contained,  
5 I assume, in your -- I'm showing the Statement of  
6 Testimony of Intervenor City of El Segundo, a  
7 five-page document dated January 23, 2003, is that  
8 correct?

9 MR. HENSLEY: That's correct.

10 HEARING OFFICER SHEAN: All right. Is  
11 there objection to admission of -- let me just say  
12 I believe that yesterday, without your even having  
13 to be here to do it, we had entered that into  
14 evidence already into the record.

15 MR. HENSLEY: Okay.

16 HEARING OFFICER SHEAN: So, if you'd  
17 like, and you would like your witness to do so,  
18 you can basically summarize --

19 MR. HENSLEY: We don't really have any  
20 additional evidence to put on. We just wanted to  
21 make the statement that it's been an ongoing  
22 process. We had originally requested seven acres  
23 of open space on the property.

24 It's our understanding at this point in  
25 time that it's a fairly narrow issue, that is the



1 applicant is -- excuse me, I'm sorry, I had a bit  
2 of a schedule snafu this morning, but, good  
3 morning Board Members and thank you for letting us  
4 be here today.

5 PRESIDING MEMBER PERNELL: Morning.

6 MR. HENSLEY: It's a fairly narrow  
7 issue, as I understand it. At this point it's  
8 whether the 1.2 acres that the applicant is  
9 designating as open space is going to be open to  
10 the public or not.

11 Our strong position is that it really,  
12 to have any utility, needs to be open to the  
13 public. The City's general plan has a strong  
14 emphasis on encouraging and supporting  
15 recreational views and access to the shoreline  
16 area.

17 The City's position is that really if  
18 the applicant is going to make these available,  
19 which we think is consistent with the City's  
20 general plan, and is required by the City's  
21 general plan, and is something that is a  
22 relatively minor mitigation for what is a large  
23 project, and to provide some shoreline access to  
24 the public, this is really something that should  
25 be a rather simple matter.

1           That the applicant should want to do, as  
2           part of their project. And to fence it off, we  
3           really don't understand why it needs to be fenced  
4           off, or what the purpose of that would serve. In  
5           fact, it seems contrary to the Warren Alquist Act  
6           and to our general plan.

7           Our simple request is to make that open  
8           to the public so that it can be accessed by the  
9           general public for use.

10          HEARING OFFICER SHEAN: And by "that"  
11          you apparently mean a 1.2 acre area in the  
12          southwest corner of the --

13          MR. HENSLEY: That's correct.

14          HEARING OFFICER SHEAN: -- applicant's  
15          property?

16          MR. HENSLEY: That's correct.

17          HEARING OFFICER SHEAN: And would it be  
18          your idea that any -- actually, let's -- Mr. --

19          MR. HENSLEY: Hensley.

20          HEARING OFFICER SHEAN: -- Hensley, yes,  
21          but I'm thinking, for Mr. Hansen, are you familiar  
22          with this proposal? Let's ask, because I'd like  
23          to ask questions of you that we can use for  
24          purposes of the record and making a decision. And  
25          under those circumstances Mr. Hansen needs to be

1 sworn in.

2 MR. REEDE: A suggestion. May we swear  
3 in staff at the same time?

4 HEARING OFFICER SHEAN: Yes, while the  
5 staff witness is here, as well. Sure.  
6 Whereupon,

7 JAMES HANSEN  
8 was called as a witness herein, and after first  
9 having been duly sworn, was examined and testified  
10 as follows:  
11 Whereupon,

12 MARK HAMBLIN  
13 was called as a witness herein, and after first  
14 having been duly sworn, was examined and testified  
15 as follows:

16 HEARING OFFICER SHEAN: Thank you.

17 I'm just trying to understand the  
18 concept because no one has ever yet defined it to  
19 the Committee. This is a 1.2 acre parcel of this  
20 property on the southwest corner, which do you  
21 have a concept in mind? Is this a nearly square  
22 or nearly rectangular piece? And what would its  
23 use be, given what's there now?

24 MR. HANSEN: The configuration and  
25 general layout is depicted on the landscape map.

1 I don't have that in front of me, but I believe  
2 it's part of the record prepared by the applicant  
3 quite some time ago.

4 And it is actually more of a square area  
5 that is at the very precise southwesternmost  
6 corner overlooking the Pacific Ocean and  
7 immediately adjacent to the existing bike path  
8 that runs a course north/south, actually  
9 coterminous with the westernmost portion of that  
10 property.

11 The proposal is quite modest by typical  
12 standards of the City. The intent was to be a  
13 passive recreation area taking advantage of the  
14 Pacific Ocean views, the adjacent bike path I  
15 referenced, and, of course, the beach provide an  
16 area where either bicyclists or pedestrians could  
17 really take a break, perhaps have a drink or a  
18 sandwich, and enjoy a passive area with perhaps a  
19 few benches and modest shelters, and some  
20 landscaping for shade.

21 And that really is about it. Its course  
22 lies immediately north of the existing park and  
23 beach area of El Porto, a very popular surf and  
24 picnicking area.

25 HEARING OFFICER SHEAN: And does that

1 area have the types of amenities you've talked  
2 about, mentions of shelters and shade?

3 MR. HANSEN: Yes, it does, very modestly  
4 improved -- pretty minimal improvements, really.  
5 The beach is the main amenity. And very little of  
6 what I've referenced is out there today.

7 HEARING OFFICER SHEAN: And is this area  
8 currently fenced?

9 MR. HANSEN: This area we're  
10 referencing, the corner, yes, it's actually part  
11 of the developed property of the power plant. And  
12 there's actually a large rock berm that was placed  
13 many many years ago behind the fence. And the  
14 property rises rather dramatically.

15 HEARING OFFICER SHEAN: So, the concept  
16 from the City would be to remove the rock berm and  
17 somehow make this -- alter the fenceline so that  
18 this property would lie outside the perimeter  
19 fence?

20 MR. HANSEN: Yes, actually the applicant  
21 had proposed in their plans on that map I  
22 referenced earlier, to improve the property such  
23 that they would remove a lot of this rock debris  
24 that was dumped many years ago, and taper the  
25 property back from the west, rising to the east.

1           But the immediate area that I was  
2   referencing, adjacent bike path would be  
3   relatively flat. And with some modest  
4   landscaping, again really for casual passive use  
5   by the public.

6           HEARING OFFICER SHEAN: Okay. Is there  
7   potential for improvement at the beach area that  
8   you've cited to the south of this particular  
9   parcel for the amenities --

10          MR. HANSEN: Yes, there is. There is  
11   probably some potential. It's been there for I  
12   don't know how long, have no idea how many years,  
13   but many many years. And the ownership, I  
14   believe, is either state or county. I'm sorry, I  
15   don't know that precisely.

16          But either for lack of funds, or lack of  
17   desire over these many years, they've never  
18   offered any improvement to the El Porto area.  
19   I've lived in the area for ten years, and there's  
20   been no improvements during that time.

21          HEARING OFFICER SHEAN: Okay. And as  
22   far as the property that you're requesting that  
23   the applicant provide, would the maintenance of  
24   that area then fall on whom?

25          MR. HANSEN: Actually, maintenance,

1 security and ownership are three unresolved  
2 issues. The City has continuously expressed a  
3 desire to really meet with the applicant and  
4 settle those issues outside of this very formal  
5 process, because we don't see any of them as  
6 insurmountable.

7 And what we would work out would  
8 probably be consistent with the other properties,  
9 the beach cities that have consistently worked out  
10 over the many years to provide the public access  
11 and recreational areas.

12 So, bottomline is we're willing to  
13 discuss those and work those out, and don't see  
14 any of them as particularly challenging.

15 MR. HENSLEY: And if I might?

16 HEARING OFFICER SHEAN: Yes.

17 MR. HENSLEY: I would think it would be  
18 appropriate that if the Commission wants to  
19 condition that upon the City accepting that as a  
20 maintenance or recreation easement, and be  
21 responsible for that as a recreation, that's  
22 something the City's willing to do.

23 HEARING OFFICER SHEAN: And I guess,  
24 just so it's clear, that the area you spoke to  
25 about which is south of this particular parcel is

1 essentially, if not in the City of Manhattan, at  
2 least its sphere of influence, as opposed to the  
3 City of El Segundo?

4 MS. MURPHY: It's in the City.

5 MR. HANSEN: That's correct, actually it  
6 is in the City. I think the alignment is 45th  
7 Street running east/west. And so the improved El  
8 Porto area, virtually all of it is in the City of  
9 Manhattan Beach.

10 HEARING OFFICER SHEAN: Okay. Within  
11 the City of El Segundo are there opportunities for  
12 improvement of any of the beach access or public  
13 use areas, in the City of El Segundo?

14 MR. HANSEN: Outside of this area?

15 HEARING OFFICER SHEAN: Yes.

16 MR. HANSEN: Yes. Due north of this, as  
17 you proceed up, the City has one very small area  
18 named El Segundo Beach that lies just north of the  
19 improved Chevron -- the unimproved, I'm sorry, the  
20 unimproved Chevron beach area, and south of the  
21 Doekweiler Beach state beach area. And it has a  
22 driveway, small parking lot, and there's actually  
23 no amenities out there on the beach at all.

24 It lies within the City of El Segundo,  
25 but not within the ownership of the City of El



1       Segundo. And only about three years ago was it  
2       named El Segundo Beach. Otherwise it really had  
3       no formal reference. It's an extremely modest  
4       area. It's merely an access point with a parking  
5       lot and some sanitation facilities.

6               HEARING OFFICER SHEAN: So there are  
7       restrooms on the property?

8               MR. HANSEN: Port-A-Potties, I believe.

9               HEARING OFFICER SHEAN: Port-A-Potties.  
10       Is this Chevron property?

11              MR. HANSEN: I believe it's under the  
12       ownership of either the Los Angeles County or the  
13       state, but not Chevron. Chevron does own beach  
14       property immediately to the south of this, which  
15       is fenced up to the edge of the bike path, as I  
16       recall.

17              HEARING OFFICER SHEAN: Now, does the  
18       bike path emerge at this El Segundo Beach?

19              MR. HANSEN: Yes, it passes really right  
20       adjacent parking lot, between the parking lot and  
21       the sand in the beach area.

22              HEARING OFFICER SHEAN: Okay. Questions  
23       from any other party?

24              PRESIDING MEMBER PERNELL: Am I to  
25       understand this is the only issue that the City

1 has, which is the 1.2 acres?

2 MR. HANSEN: It's the only land use  
3 issue, --

4 PRESIDING MEMBER PERNELL: Yes.

5 MR. HANSEN: -- yes, sir.

6 MS. MURPHY: I would like -- I have more  
7 issues with land use, and I wonder if the City  
8 doesn't want to comment on them, at least.

9 PRESIDING MEMBER PERNELL: One second,  
10 please. One second, please.

11 MS. MURPHY: Yes.

12 PRESIDING MEMBER PERNELL: And are you  
13 suggesting that the applicant deed the 1.2 over to  
14 the City? Or that they rehab it and do  
15 maintenance on it continuously throughout the, you  
16 know, infinity?

17 I'm trying to get a clearer picture of  
18 exactly what you're proposing here.

19 MR. HANSEN: We would find a  
20 recreational easement arrangement as satisfactory.  
21 And accept the responsibilities for maintenance.

22 PRESIDING MEMBER PERNELL: Okay. A  
23 recreational easement. Explain that to me.  
24 Just --

25 MR. HENSLEY: In essence the City would

1 have an easement over the soil, if you will, for  
2 that area where the use would be limited for  
3 recreational purposes. That would be the only  
4 lawful use the City could put in there.

5 And the City would have the  
6 responsibility of maintaining it for that purpose.

7 PRESIDING MEMBER PERNELL: But they  
8 would --

9 MR. HENSLEY: Those are fairly typical  
10 arrangements that cities enter into.

11 PRESIDING MEMBER PERNELL: But the City  
12 wouldn't own it?

13 MR. HENSLEY: That's correct.

14 PRESIDING MEMBER PERNELL: So what would  
15 prevent the applicant from, in two years,  
16 reclaiming the property?

17 MR. HENSLEY: Well, the easement's a  
18 legal right the City would have, so the terms of  
19 the easement would restrict the applicant from  
20 using the surface of the property.

21 PRESIDING MEMBER PERNELL: But they  
22 would still own it?

23 MR. HENSLEY: They would own --

24 PRESIDING MEMBER PERNELL: Would they  
25 have to pay taxes --

1 MR. HENSLEY: -- they would have -- they  
2 would own all of the property and they would have  
3 whatever rights there are to use below the  
4 property.

5 PRESIDING MEMBER PERNELL: Would they  
6 have to pay taxes on the easement?

7 MR. HENSLEY: I would suspect there  
8 might be some taxes, although generally they get  
9 relatively reduced to nothing if they have no  
10 right to use the surface area of the property.

11 HEARING OFFICER SHEAN: All right. Do  
12 we have any questions of the City from the  
13 applicant or the staff? Anything?

14 MS. MURPHY: I think it would be more  
15 useful for the residents that are here to be sworn  
16 in and provide some testimony that they can --  
17 that before I ask questions of the City, because  
18 my questions involve differing scenarios for this  
19 land.

20 So, could I ask that we all three be  
21 sworn in, the only people here that are residents?  
22 And offer some testimony?

23 HEARING OFFICER SHEAN: Now, let's just  
24 make sure that -- first of all, since you did not  
25 request that in the prehearing conference, we

1 would be doing something that essentially is  
2 additive, and we have the time to do some of that.

3 Let's just make sure that the people who  
4 are here and we have -- do you have a staff  
5 witness that you want to have testify on this  
6 issue?

7 MR. ABELSON: We're having to introduce  
8 our witness in this area, Mr. Mark Hamblin. And  
9 he's already been sworn.

10 I think it might be helpful, just for  
11 the Committee's benefit, if I just ask a couple of  
12 real basic questions to Mr. Hamblin so that we can  
13 get a little context of how the issue is shaping  
14 up and where we're at at the moment.

15 So, with that, Mark, I'd ask the  
16 following questions, if I could.

17 DIRECT EXAMINATION

18 BY MR. ABELSON:

19 Q Number one, can you just read out loud  
20 the recommended condition as it currently stands  
21 on this issue?

22 I'm referring to condition Land-9.

23 A This is from the January 7th document  
24 that was circulated. The full wording of it,  
25 Land-9: The project owner shall provide copies of

1 the final perimeter landscape plans to the CPM  
2 pursuant to the conditions of certification Vis-2.  
3 Said landscape plans shall show and identify the  
4 area to be designated for public use subject to  
5 restrictions for security and public safety, as  
6 determined by the CPM."

7 "The project owner shall install park-  
8 type benches for public use within the public use  
9 area designated on the final perimeter landscape  
10 plan."

11 "Verification: Public park-type benches  
12 shall be installed pursuant to the schedule  
13 contained in Visual Resources condition of  
14 certification Vis-2. And then within 14 days  
15 after completion of the public use area, the  
16 project owner shall contact the CPM to request a  
17 final inspection."

18 Q So, based on the language as you've read  
19 it, staff is proposing, and I take it the  
20 applicant has accepted, a condition requiring that  
21 there will be, in effect, a dedication of land for  
22 public use, is that correct?

23 A Correct.

24 Q And the question is whether or not it  
25 should specifically focus on the 1.2 acres that

1 the City of El Segundo has talked about? That's  
2 at least part of the issue?

3 A That is part of the issue.

4 Q All right. Now, the Public Resources  
5 Code section of the Warren Alquist Act, 25529, it  
6 doesn't require that a specific piece of land be  
7 identified, does it?

8 A No.

9 Q And it further does require that  
10 whatever is made available for public access  
11 should be subject to restrictions required for  
12 security and public safety, is that correct?

13 A Correct.

14 Q With regard to the situation on the 1.2  
15 acres, could you explain whether or not, in your  
16 understanding, the City of El Segundo has been  
17 asking that it be available to the public at all  
18 times?

19 A Yes.

20 Q This is 24 hours a day?

21 A Yes. And removal of any impediments  
22 such as a fence.

23 Q Right. Has the question of it being  
24 accessible 24 hours a day caused you or any other  
25 party that you're aware of in this proceeding

1 concern with regard to the issue of security and  
2 public safety?

3 A Yes.

4 Q And could you explain who is concerned  
5 and what the nature of that concern is, as you  
6 understand it?

7 A Yes. The nature of the concern is in  
8 the wake of, one, we have a stipulation in 25529  
9 that says that we shall be concerned about the  
10 public safety and security of this particular  
11 site.

12 In the past there have been fencing  
13 applications, as long as there's access to the  
14 public, staff has worked with the City, the  
15 applicant in those regards.

16 But, in the wake of September 11th the  
17 Governor has gotten, as well as most state and  
18 federal government, have become more concerned  
19 with the siting of concerned areas near, about and  
20 on public power generating sites among them.

21 And this issue regarding a 1.2-acre  
22 onsite property did present a concern to our  
23 compliance section. Now, they have not said no,  
24 you can't have it. But they are concerned about  
25 having public accessibility 24 hours unabated



1 without the potential of some type of fencing  
2 around it in order to prevent loitering or  
3 concerns about researching, reconnaissance, or  
4 potential protesters, these types of things  
5 affecting the site.

6 MR. ABELSON: Let me also ask, in  
7 addition to that concern, is it not the case at  
8 the moment that there is a restriction on the use  
9 of the adjacent bike path in terms of hours of  
10 use?

11 A That's correct.

12 Q So that while that restriction does  
13 exist for the bike path immediately adjacent, at  
14 least under the proposal the City of El Segundo  
15 has been making there would be no comparable  
16 restriction for this 1.5 acres?

17 A Right. Let me add that the beach does  
18 have a timeframe in which it closes. As I spoke  
19 with the representatives from Los Angeles County  
20 Beaches and Harbors, the beach closes at 10:00.  
21 The parking area closes at 8:00.

22 And so there seems to be, this area, as  
23 going forward and as presented in staff's  
24 testimony or supplemental testimony, this was a  
25 question staff had presented regarding this issue

1 of keeping it open 24 hours.

2 The applicant's written testimony has  
3 said that they will make it publicly accessible.  
4 There seems to be at least agreement that we've  
5 got to recognize that there are some hours of  
6 nonuse that will occur. And also the fact that we  
7 have a broader concern that may come down as some  
8 type of future directive from the Governor's  
9 Office or the CAT, the California Anti Terrorist  
10 group that's meeting on this matter. Not only  
11 affecting this facility regarding these public use  
12 areas, but as well as other facilities that we'll  
13 be dealing with throughout the state.

14 Q Two more questions. Is it correct to  
15 say that the applicant is contemplating, and  
16 indeed will be required to do some alignment and  
17 adjustment of the fenceline along the western  
18 perimeter of the property that interfaces more or  
19 less with the bike path and the beach?

20 A Can you repeat that?

21 HEARING OFFICER SHEAN: Hard to answer a  
22 compound question.

23 BY MR. ABELSON:

24 Q To your knowledge is there going to be  
25 some work done on the fenceline along the west

1 side of the property --

2 A Yes.

3 Q -- the seawall, I'm sorry, perhaps more  
4 commonly referred to as the seawall?

5 A Yes.

6 Q And is it possible that as a result of  
7 that there may be some opportunity for recessed  
8 coves or access points for benches along that  
9 seawall?

10 A Yes. The applicant has shown that in  
11 their, I believe it's January 9th dated landscape  
12 concept plan. The north portion of the property  
13 there's a recession of approximately 15 feet.

14 And then there's also, towards the  
15 southern portion fronting the bicycle path there's  
16 a recession of roughly three feet, where there's  
17 also indication, a statement shown on the map,  
18 itself, that there will be public park benches and  
19 landscaping installed.

20 Q So, for Mr. Shean's benefit, to  
21 summarize your testimony at this point, number  
22 one, the conditions do require that a certain  
23 amount of public access -- excuse me, that public  
24 access be provided?

25 A Correct.

1           Q     They do not require that a specific  
2     amount of acreage, or even a specific location be  
3     provided?

4           A     Correct.

5           Q     Instead, because of concerns about  
6     public safety and health, which are specifically  
7     part of the Resources Code, that issue would be  
8     resolved through the compliance process, is that  
9     the concept?

10          A     Correct.

11               MR. ABELSON:  Thank you, I have no  
12     further questions.

13               PRESIDING MEMBER PERNELL:  Thank you.

14               HEARING OFFICER SHEAN:  I have a  
15     question.  With respect to the concern that --  
16     well, first of all, if the are that we're talking  
17     about here had a similar closure restriction, such  
18     as either 8:00 p.m. or 10:00 p.m., would the staff  
19     then have a concern -- or let me say would that  
20     lessen staff's concern about the availability of  
21     the property?

22               MR. HAMBLIN:  It would less this staff,  
23     and I believe also compliance.

24               HEARING OFFICER SHEAN:  Okay.  Is there  
25     any reason to be more concerned about this portion

1 of the property than say -- well, than the  
2 property line between the project and the Chevron  
3 station?

4 MR. HAMBLIN: No.

5 HEARING OFFICER SHEAN: And the Chevron  
6 station property is accessible 24 hours a day, is  
7 it not?

8 MR. HAMBLIN: Yeah, it wouldn't present  
9 a concern in that we are still addressing 25529.  
10 I think there's still a fundamental issue,  
11 security issue overall about putting something  
12 even onsite or probably I would say with -- and  
13 I'm going to speak on behalf of our compliance  
14 people, and I'm not professing to know their  
15 directives yet, but anything onsite, whether it's  
16 this facility, they will probably have a concern  
17 on.

18 If it's adjacent to the site, they will  
19 probably have a concern, but it would be lesser.  
20 So I think in the future the farther the project,  
21 or something like that, if it were to occur that  
22 our compliance people, in recognizing the  
23 Governor's concerns, will probably take a much  
24 more conservative approach and say keep it as far  
25 away as possible.

1 HEARING OFFICER SHEAN: Now, the  
2 recessions --

3 MR. ABELSON: Mr. Shean, if I could just  
4 ask one clarification of you, because I wasn't  
5 quite clear on the question you're asking.

6 HEARING OFFICER SHEAN: You're not clear  
7 on whether I understand or --

8 MR. ABELSON: No, no, I wasn't clear on  
9 the reference point you were making to my witness.  
10 If I could just ask if --

11 HEARING OFFICER SHEAN: Go ahead.

12 MR. ABELSON: -- could clarify it for  
13 me. You were asking about the access to the  
14 Chevron property adjacent to this facility that's  
15 opened up?

16 HEARING OFFICER SHEAN: I'm just noting  
17 the fact that the Chevron proper borders this  
18 project, and it has unfettered access 24 hours a  
19 day.

20 MR. ABELSON: Right, it --

21 HEARING OFFICER SHEAN: You know, the  
22 service station.

23 MR. ABELSON: Yeah. And I guess all I  
24 was trying to be clear on, this is where I got  
25 confused was that whether staff is concerned about

1       it is, I guess, a separate issue than whether we  
2       have any jurisdiction over it.

3               HEARING OFFICER SHEAN: I'm just raising  
4       the point. You have concern over this 1.2 acres  
5       that's in the southeast corner. You have a gas  
6       station that's sitting on top of the property that  
7       has a better view of all the components of the El  
8       Segundo Generating Station than they would get  
9       from this piece. And the entire length of the run  
10      on Vista del Mar is public property open 24 hours  
11      a day.

12             I'm just trying to understand whether or  
13      not the concern the staff has expressed is a  
14      balanced concern, given all the other  
15      opportunities to observe what's going on in the  
16      facility, as well as to potentially access it.

17             And, of course, I have a concern whether  
18      or not the potential, the anti-terrorist element  
19      of this, is whether they are going to obey a sign  
20      that tells you you can't park there after 8:00, or  
21      you can't access it after 10:00.

22             And this is why there needs to be some  
23      rational thinking in the government. And I'm  
24      through.

25             UNIDENTIFIED SPEAKER: We can actually

1 answer --

2 MR. MCKINSEY: May I ask a couple of  
3 questions?

4 MR. HAMBLIN: If staff could respond  
5 to --

6 HEARING OFFICER SHEAN: Sure, go ahead.

7 MR. HAMBLIN: Staff understands your  
8 concern. Staff has that similar concern. Staff  
9 is taking the messenger here, and we are going  
10 forward --

11 PRESIDING MEMBER PERNELL: We're not  
12 trying to shoot the messenger.

13 HEARING OFFICER SHEAN: No, we're not  
14 going to shoot the messenger.

15 MR. HAMBLIN: -- at least to identify --  
16 no, no, because --

17 MS. MURPHY: The residents have other  
18 concerns, however.

19 MR. HAMBLIN: -- because there is the  
20 issue. We do have a bike path. Sure, we could be  
21 riding down the bike path and doing photo  
22 reconnaissance; we could walk along the beach in  
23 non-high-tide areas.

24 So it is understood that this concern,  
25 as expressed by this Committee and by staff, is



1 genuine in both regards.

2 HEARING OFFICER SHEAN: And will the  
3 recession areas that you've discussed, are those  
4 in an area that has what we would typically call a  
5 cyclone fence, or is this going to be a solid  
6 fence?

7 MR. HAMBLIN: There has been discussion  
8 in the landscape plan on that. I believe it's  
9 going to be cyclone fence with some type of  
10 landscaping in front of it, and/or screening, but  
11 I'm not the -- I didn't review the visual changes  
12 that may have taken place.

13 HEARING OFFICER SHEAN: All right. Mr.  
14 Reede is --

15 MR. REEDE: Hearing Officer Shean,  
16 there's proposed to be an undulating seawall. And  
17 alternating between trees, bench, on a concave,  
18 you know, facing the ocean, there would be a tree.  
19 Then the next one there would be a park bench.  
20 It's my understanding --

21 HEARING OFFICER SHEAN: Okay.

22 MR. REEDE: -- that if you look at the  
23 lower portion of the landscape plan, you'll see  
24 benches. At the northern end there would also be  
25 the tree/bench/tree/bench type of arrangement.

1           MR. McKINSEY: I have a question for Mr.  
2 Hamblin, a couple questions.

3           HEARING OFFICER SHEAN: All right, I'm  
4 all done.

5                   CROSS-EXAMINATION

6 BY MR. McKINSEY:

7           Q     Mr. Hamblin, did you read our rebuttal  
8 testimony in the area of land use?

9           A     Yes.

10          Q     Do you recall the point we made that  
11 section 25529 appears to potentially not be  
12 applicable to repowering projects? And that it  
13 appears to conceive of the idea, in fact it  
14 expressly states projects to be located in the  
15 coastal zone, facilities to be located in the  
16 coastal zone.

17           I can take you to our page; it's page 4  
18 of our rebuttal testimony.

19          A     Okay, this is dated January 22nd?

20          Q     February 10th, our rebuttal testimony.

21           MR. REEDE: February 10th.

22 BY MR. McKINSEY:

23          Q     I can -- on page 4, the second full  
24 paragraph begins, Even more important.

25          A     Okay, proceed.

1           MR. ABELSON: Just for the record I'm  
2 going to pose a tentative objection to this line  
3 of questioning, because it goes to the issue of  
4 what the statute does or doesn't say, and what it  
5 means legally, and that's obviously in the nature  
6 of legal argument. So, --

7           MR. McKINSEY: Well, I'm not going to  
8 ask him what it means. I just want to ask him  
9 whether or not he's considered it in that context  
10 or not.

11 BY MR. McKINSEY:

12           Q     My question is if it were the case that  
13 25529 indicates that this facility doesn't  
14 actually come under 25529, then would there be any  
15 other law that you're aware of that would require  
16 us to potentially have to provide public access  
17 property?

18           A     If it is -- we're taking the  
19 hypothetical approach that if 25529 did not apply.  
20 Okay, so we're removing ourselves from the legal  
21 argument from that. Okay.

22                     At this time the only other one that is  
23 obvious to me, other than a local issue that may  
24 come up such as the El Segundo local coastal plan,  
25 would be something bigger into the California

1 Coastal Act.

2 Now, the California Coastal Act, the  
3 California Coastal Commission has not submitted to  
4 us a letter stating that there was going to be an  
5 issue on coastal access. So that issue, that was  
6 not even brought up in the review, since they did  
7 not address it.

8 Q Are you aware that any other party has  
9 indicated another law that would require that as a  
10 result of this project that land needs to be  
11 donated or provided for public access?

12 A No.

13 MS. MURPHY: I believe I've raised that  
14 issue.

15 MR. McKINSEY: That's my only questions.

16 HEARING OFFICER SHEAN: Do you have --  
17 first of all, let's go back to the City of El  
18 Segundo. Yes, sir.

19 MR. HENSLEY: I wanted to clarify a  
20 couple of issues, if I might.

21 CROSS-EXAMINATION

22 BY MR. HENSLEY:

23 Q Statements were made that the City of El  
24 Segundo maybe, I don't want to mischaracterize  
25 them, but let me ask the question.

1                   Is the City of El Segundo --

2           A     Okay, this is going to be me, right?

3           Q     Yes, I'm sorry.

4           A     Okay, okay.

5           Q     Has the City of El Segundo specifically  
6 requested that the site be open 24 hours?

7           A     Yes.

8           Q     And when was that request made?

9           A     Actually that was in a letter December  
10 9th, I believe. The City --

11          Q     Are you saying because the City has  
12 asked that --

13          A     And also verbal actions, verbal  
14 presentations made by --

15          Q     But are you inferring that from the fact  
16 the City doesn't want it fenced, or specifically  
17 that they say it should be open 24 hours?

18          A     That was my question. Okay, and that's  
19 why in supplemental testimony we're trying to  
20 break it down and explain that there are other  
21 areas of timeframes for prohibiting, such as the  
22 beach, such as the parking area, and seek  
23 clarification on it.

24                   I mean technically it could be fenced  
25 off and still remain accessible to the public.

1 Just maybe not at 24 hours. But provide adequate  
2 security through that process.

3 There are other options to provide, I  
4 think staff believes, to meet the needs and still  
5 have it publicly accessible, other than just  
6 simply to prohibit a fence.

7 Q If security is a concern, given your  
8 statements about the access or view from the  
9 Chevron site, the beach, Vista del Mar, is it your  
10 opinion that the better focus is on the type of  
11 fencing, the security onsite or on the trying to  
12 prevent public access around the site?

13 A What I think the concern that I'm  
14 hearing, one, 25529 is my concern. Now, how we  
15 achieve that, whether that's, I don't know,  
16 through improved security systems onsite, that's  
17 actually beyond my involvement, because I'm not  
18 tied into the security committee that -- I don't  
19 even know who's on it, other than I'm getting  
20 words down from it. Or at least some sort of  
21 policies through it.

22 I would personally still pursue it on  
23 the avenue of public sensibility.

24 Q You gave some extensive testimony about  
25 that concern and directives that might come down

1 from the Governor's Office and other issues. Let  
2 me ask this, do you believe the site substantially  
3 is safe, or if the 1.2 acres is not open to the  
4 public, in light of all of the other public access  
5 around the site?

6 A I believe the site is safe. I believe  
7 that if we put a fence around it and open it up  
8 during the beach hours, I think we can meet the  
9 objectives of both for all the parties.

10 Q Finally, the condition, as it's  
11 currently worded, is it possible that by simply  
12 putting one bench adjacent to the recreation path  
13 and putting a fence around that bench, just enough  
14 fence around that bench to allow people to sit  
15 down, could that conceivably meet the requirements  
16 of that condition?

17 A Does it meet the letter of the law?

18 Q Well, I mean if through this process you  
19 describe, determine that security reasons,  
20 whatever other reasons, --

21 A Or the possible --

22 Q -- you put one bench there, next to the  
23 path, and the fence just goes around the bench,  
24 could that technically meet that requirement?

25 A We have a landscape concept plan that we

1       were working off of, but I think if you were -- in  
2       the course of compliance review it wouldn't meet  
3       my review on it, no.

4               But in the letter of the law, and if  
5       something were to happen to me, god forbid, yes.

6               Q     Well, that's obviously one of the  
7       concerns the City of El Segundo, -- currently  
8       written. Those are questions I had.

9               A     And I, let me add, if I could, further?  
10      A directive may come down, I keep mentioning this  
11      group because this counter-whatever -- again, I'm  
12      operating in a void, because I don't know what's  
13      going to happen here.

14              But the thought did come is they could  
15      say something about future power plants are not to  
16      allow onsite use. So that's -- onsite public  
17      accessible areas.

18              Q     Well, and at that point, that's all  
19      conjecture, and whatever onsite means, and if the  
20      City actually had -- if it wasn't part of the  
21      site, how you define that?

22              A     Correct. And now you understand my  
23      dilemma.

24              HEARING OFFICER SHEAN: Okay.

25              MR. HAMBLIN: But it does also explain



1       why we're trying to put in some of the public  
2       safety and security language to give that  
3       flexibility to us, rather than maybe going back to  
4       a full Commission hearing, inviting you to  
5       Sacramento.

6               HEARING OFFICER SHEAN:   Okay.   Did you  
7       have some questions you want to ask of the  
8       witness?

9               MS. MURPHY:   No, I'd like to give  
10       testimony before; I'd like to reserve my right to  
11       question.   I'd like to -- all the residents that  
12       are here to give testimony about the facts that  
13       have been misstated.

14              HEARING OFFICER SHEAN:   Okay, we'll  
15       excuse Mr. Hamblin, then.

16              MS. MURPHY:   No, I have questions for  
17       Mr. Hamblin, too.

18              HEARING OFFICER SHEAN:   Well, I just  
19       asked you that.

20              MS. MURPHY:   I'd like to reserve that  
21       until I've presented the evidence that I want to  
22       present.

23              HEARING OFFICER SHEAN:   All right, and  
24       your evidence is going to be oral testimony --

25              MS. MURPHY:   That lots of the things

1 people have said here are wrong. Oral testimony  
2 by the residents that know the area.

3 HEARING OFFICER SHEAN: All right.  
4 Since you've all been sworn, why don't you go  
5 ahead.

6 MS. MURPHY: We have not been sworn.

7 HEARING OFFICER SHEAN: We're going to  
8 offer you a limited opportunity to do this, since  
9 it was not scheduled, okay?

10 MS. MURPHY: I believe it was, it should  
11 have been scheduled. I believe I've been ignored.  
12 I feel sand-bagged and I need to talk about that  
13 at some point. But we've never been sworn in, the  
14 residents have never been sworn in.

15 HEARING OFFICER SHEAN: All right, so  
16 it's the three of you?

17 MS. MURPHY: Yes.

18 HEARING OFFICER SHEAN: All right, go  
19 ahead, then, please.  
20 Whereupon,

21 MICHELLE MURPHY, BOB PERKINS  
22 and RICHARD G. NICKELSON  
23 were called as witnesses herein, and after first  
24 having been duly sworn, were examined and  
25 testified as follows:

## DIRECT TESTIMONY

MS. MURPHY: I first raised these issues  
I'm going to talk about now about two years ago.  
This is the sandy beach in front of my house.  
This rock pile that you see there used to be,  
naturally is, sand. It is now what we call --  
what do they call it --

MR. REEDE: Rip-wrap.

MS. MURPHY: -- rip-wrap that was put in  
there in 1987 or '8 after the big storms because  
the bike path was washed out. I'm not sure -- I  
didn't live here at that time, I'm not sure if  
there were any kind of hearings, any chance to  
say, but I live on a sandy beach. But that's what  
we have now in front of our house, is this beach.

And there's another picture of the  
longer view of it showing how it goes all the way  
down to the power plant and there is no beach  
access.

I thought we were going to address this  
now. One of the things I said in my testimony was  
that there is no beach access. To get from  
Manhattan Beach to the other side of the power  
plant requires walking up -- I don't know how many  
yards to the highway, and walking along the

1 highway, and back down.

2 That in -- in the summer months there is  
3 sand on the beach; you can walk in the sand. In  
4 the winter months, you climb over these rocks,  
5 which would be dangerous, people do it. There's  
6 someone doing it right there, playing in the  
7 rocks.

8 And there is no beach access whatsoever.  
9 It's illegal to go on the bike path. One of the  
10 things proposed by staff was to build a path  
11 through here. I don't know how they propose to do  
12 it, be it an under-water path or a through-the-  
13 rocks path. I don't think that's going to work.

14 The other thing proposed is to create a  
15 path that people are allowed to walk on out of  
16 property owned by the applicant, which seems to be  
17 fair. It seems to me it raises issues.

18 I've raised this with the Coastal  
19 Commission. They, I think, didn't understand  
20 because they talked in terms of the spit on the  
21 other end. I'm talking in terms of what the rip-  
22 wrap is doing to the beach, the access.

23 HEARING OFFICER SHEAN: Where is the  
24 bike path relative to either of those photographs?

25 MS. MURPHY: Just below the power plant

1 and behind the rocks.

2 MR. PERKINS: On top of the rocks.

3 MS. MURPHY: On top of the rocks.

4 HEARING OFFICER SHEAN: On top of the  
5 rocks.

6 MS. MURPHY: And currently there is no  
7 pedestrian access. It's illegal to step on the  
8 bike path; people do it all the time. And they  
9 ignore it. But, there is no way to get from one  
10 point to the other at high tide or in winter, or  
11 at most of the time in the winter. The winter's  
12 just higher.

13 HEARING OFFICER SHEAN: And the bike  
14 path is asphalt?

15 MS. MURPHY: Yes.

16 MR. REEDE: Yeah. The bike path is  
17 right along Green, sir.

18 HEARING OFFICER SHEAN: Um-hum.

19 MS. MURPHY: This winter --

20 PRESIDING MEMBER PERNELL: And you said  
21 it's illegal to step on the bike path?

22 MS. MURPHY: It is.

23 MR. PERKINS: It's bikes only; no  
24 pedestrians --

25 MS. MURPHY: Everyone does it --

1 MR. PERKINS: -- well posted --

2 MS. MURPHY: -- everyone does it, but  
3 it's illegal. And it was in the applicant,  
4 staff's response to say that it would take a good  
5 deal of government effort to change that, because  
6 of various county, other things involved.

7 MR. HAMBLIN: -- stage agencies --

8 MS. MURPHY: State agencies involved and  
9 so --

10 MR. HAMBLIN: -- and County  
11 participation.

12 MS. MURPHY: So, it would be difficult  
13 to make it legal to walk on there. People do walk  
14 on it. I walked on it, you know, but --

15 MR. HAMBLIN: Yeah, staff was informed  
16 by the County that El Segundo PD was not enforcing  
17 the --

18 PRESIDING MEMBER PERNELL: Does not  
19 enforce --

20 MR. HAMBLIN: Does not enforce violators  
21 walking on the bicycle path, but they did then  
22 state that it is against -- it is prohibited from  
23 pedestrian --

24 MS. MURPHY: By which -- as far as I  
25 know, the beach never closes. The City of

1       Manhattan -- maybe it's -- the City of Manhattan  
2       Beach (inaudible) lost an important --

3               MR. HAMBLIN: I have to go by what the  
4       County rep told me.

5               MS. MURPHY: The County told you that.  
6       I just wanted to mention that --

7               MR. HAMBLIN: Okay, see, I -- yeah, I  
8       don't know anything about that.

9               MS. MURPHY: The parking lot really does  
10      close; it gets locked.

11              This year was an especially bad year for  
12      high tide -- not high tides, there was no real  
13      tidal damage to things, but big storms. And  
14      because of those big storms and because of the  
15      rocks you saw, there was lifeguards, put a sign up  
16      saying no swimming, no wading. And that's in  
17      front of our beach.

18              They didn't mean right in front of our  
19      beach; they meant anywhere near the rip-wrap  
20      because they told me, I called them up, and I was  
21      told that they had to peel people off the rocks.  
22      That people were going wading and being crashed  
23      into those rocks.

24              So they have made -- this rip-wrap,  
25      which apparently there's been some discussion

1 about taking out, which I think would be great, or  
2 at least lessening it so that there is a beach  
3 available for people to walk on and swim and use.  
4 I mean recreation for 10 million people.

5 So, that was just a thing that happened  
6 this year. It's not all the time. It's not there  
7 right now because the storm -- the waves are not  
8 as big right now.

9 What I have been asking, and I asked Mr.  
10 Reede a long time ago, I probably didn't do it  
11 correctly, this is not a thing I'm -- thought I  
12 tried -- years ago, I don't know the procedures  
13 here -- is that somehow the applicant be made to  
14 make beach access.

15 I mean to make it so we can go from one  
16 place to another legally. It's all right to say  
17 they're not going to prosecute, I'm sure they  
18 won't, but it's also dangerous. The bike path  
19 has, sometimes, I call them butterfly groups,  
20 because they're all dressing in bright colors, 50  
21 bikers will go zooming by and they're trying to  
22 get their 100 miles in today, so they run over  
23 people with their babies and people -- walk along  
24 there because they want to walk along there.

25 So, it's a dangerous situation. It's an



1 illegal situation. And I guess I didn't explain  
2 it well enough. I think that the Coastal  
3 Commission, somebody should care about access to  
4 the beach in this very highly populated area.

5 So what I am asking for is that -- and  
6 I'm not sure the El Segundo, the City, I'm not  
7 sure we've talked about this before, but I should  
8 think they wouldn't mind, either, if somehow we  
9 could create a pedestrian path out of applicant's  
10 land because the bike path doesn't hold both bikes  
11 and pedestrians very well. It's unsafe. That  
12 would allow us to have access through there.

13 And also I would like if -- I don't have  
14 a slide for it, but they're in your things, I'm  
15 not quite sure where. It shows that it's really  
16 not in front of the power plant. That's what you  
17 told me -- was that they couldn't change the power  
18 plant footprint because it wouldn't fit. So they  
19 couldn't move back.

20 It's not really the power plant. In  
21 front of the power plant there's sand right now  
22 coming to the power plant. It's in front of the  
23 parking lot area that it's five times bigger than  
24 they need for a parking lot, that this rip-wrap is  
25 in there and the beach really impacted.

1           You can see by looking at any picture  
2           that you have in the record that it's really over  
3           here; the beach goes up high in front of the power  
4           plant area, there's more beach; there's more land.

5           So, I think the bike path could go not  
6           in, in front of the power plant -- I mean in front  
7           of the parking lot, and back out, if you need all  
8           that space. And there still would be space for --  
9           then there'd be a beach to walk along most of the  
10          year. Plus I still would ask that there be a path  
11          up there.

12          PRESIDING MEMBER PERNELL: May I see  
13          those, please.

14          MS. MURPHY: Sure. They're in our  
15          record, I don't even know where. Sorry, I just  
16          took -- it's really --

17          MR. PERKINS: Those are both out of the  
18          AFC.

19          MS. MURPHY: In front of the storage  
20          tanks. This is summer pictures, so you can see a  
21          beach there. Winter there is no beach there. But  
22          this is where it's narrow, in front of the power  
23          plant there's more beach.

24          So if we could move the bike path inland  
25          here and make a walking area for the whole of it,

1 it would be a real improvement, a real enhancement  
2 to the --

3 HEARING OFFICER SHEAN: Is that brown  
4 line the bike path?

5 MS. MURPHY: Yes. And in parts of the  
6 bike path, the huge bike path, is bikes and  
7 pedestrians. In Hermosa Beach, for example,  
8 they're both together. But it's a very wide,  
9 paved area; it's different than the bike path  
10 here.

11 In the summer you can't -- it gets  
12 covered up.

13 HEARING OFFICER SHEAN: And the rip-wrap  
14 you had shown us is, in that picture is where?

15 MS. MURPHY: Right here.

16 HEARING OFFICER SHEAN: Okay.

17 MS. MURPHY: It's not as big, there's  
18 more sand on it; in the summer there's more sand,  
19 it's not a huge a thing as there is now.

20 HEARING OFFICER SHEAN: All right.

21 MS. MURPHY: I'd like to introduce into  
22 evidence --

23 PRESIDING MEMBER PERNELL: Yes, Ms.  
24 Murphy, if you could stay as close to that mike as  
25 possible --

1 MS. MURPHY: Right.

2 PRESIDING MEMBER PERNELL: -- that would  
3 help us.

4 MS. MURPHY: -- mark these exhibits,  
5 introduce into evidence. These are the pictures  
6 which I just showed you.

7 And those are in evidence already. You  
8 can keep those, if you'd like.

9 HEARING OFFICER SHEAN: All right, well,  
10 we'll just mark these as Murphy/Perkins 1 and 2.

11 PRESIDING MEMBER PERNELL: Let me ask  
12 you a question, --

13 MS. MURPHY: Sure.

14 PRESIDING MEMBER PERNELL: -- Ms.  
15 Murphy. Have you discussed this with the City?

16 MS. MURPHY: Of El Segundo?

17 PRESIDING MEMBER PERNELL: I mean have  
18 the citizens discussed your proposal with the  
19 City?

20 MS. MURPHY: With the City of Manhattan  
21 Beach we've talked to. And I think the City of El  
22 Segundo has been around, I mean in the form of  
23 Paul Garry, we've discussed it.

24 MR. NICKELSON: Regarding the question  
25 to the City of Manhattan Beach, the City of

1       Manhattan Beach's stand is they want to leave any  
2       objection to the residents that live in the area.

3               And if I could just say something to Mr.  
4       Shean, what you had suggested, you know, what you  
5       had said about the filling station. The filling  
6       station closes at night at 10:00. And one of the  
7       concerns of the residents is that people can come  
8       in after 10:00 and park in the station, walk down.

9               Now where Murphy/Perkins live there's a  
10       fence. At 8:00, you know, it's bars that go  
11       across their lot so that cars cannot go down into  
12       the parking lot. And if you're in the parking lot  
13       you're stuck in the parking lot.

14              Now, if this property on the right-hand  
15       side, it's not under the jurisdiction of the  
16       Manhattan Beach Police Department, it would be  
17       under the jurisdiction of the El Segundo, which is  
18       the farthest of their jurisdiction.

19              Now, I'm just saying that a police car  
20       could not go down if there were somebody at the  
21       park, in the park, be partying, or if there are  
22       fights or something like this, the police car  
23       would be limited to where the, you know, the gate  
24       closes at 8:00 at night. And they would have to  
25       get out and would have to pursue them, and it

1 would be going down maybe, oh, 200 yards, 300  
2 yards to get to where this park would be proposed.

3 And by that time, of course, the people  
4 could, you know, take off down the beach the other  
5 way. Because on the other end, at the El Segundo  
6 end, where Grand Avenue, where you go into a  
7 parking lot and you can access the beach, that  
8 also is closed at 8:00 at night.

9 So it makes it difficult, if there were  
10 parties and fights and stuff, there's a place for  
11 them to, you know, to park up at the station and  
12 walk down the hill; go into this area; and, you  
13 know, kids find a place. This would be a good  
14 place to go because it's difficult to get to by  
15 police. They know Manhattan Beach Police can't  
16 come inside of their jurisdiction. If the police  
17 come they're going to have to come all the way  
18 from El Segundo over to that area.

19 And that's just one of the concerns of  
20 people that we have who live in particular area.

21 MS. MURPHY: Yeah, I feel compelled to  
22 add the concerns of an earlier hearing of my next-  
23 door neighbor. We had more residents that were  
24 involved in this, but they got worn down by the  
25 proceeding, as you can imagine.

1           And she expressed alarm about the  
2           thought of a park there. There are some homeless  
3           people that already, I don't know, live, hang out  
4           near this area we're talking about. And there's  
5           bushes and things, and they, I don't know -- and  
6           if there was a park and nice greenery they may use  
7           it even more.

8           I personally think the more parks the  
9           merrier, but I want to express my next-door  
10          neighbor's view that that would be alarming.

11          HEARING OFFICER SHEAN: Okay.

12          MR. ABELSON: Mr. Shean, would it be  
13          helpful to know what staff's position is on this  
14          idea, just yes, no, or --

15          HEARING OFFICER SHEAN: Which idea?

16          MR. ABELSON: This idea that Ms. Perkins  
17          put forward -- Ms. Murphy, I'm sorry, beg your  
18          pardon.

19          HEARING OFFICER SHEAN: Ms. Murphy.

20          MR. ABELSON: Yes, I think it will  
21          probably just take one question and answer.

22          HEARING OFFICER SHEAN: Okay, go ahead.

23          MR. ABELSON: All right.

24          //

25          //

## REDIRECT EXAMINATION

BY MR. ABELSON:

Q Mr. Hamblin, you've just heard Ms. Murphy testify as to an idea that she and apparently some of her neighbors favor. Is there anything in your condition, as written, that would prohibit that particular suggestion?

A For a pedestrian use area, pedestrian walk path, we may have to do some modification to the condition, but staff, again, if this is something that's coming forward it does meet -- in staff's mind, meet 25529.

Q So all I wanted to convey was I don't think -- we can tweak the language if that's the issue, but I don't think staff envisions the condition as written as prohibiting that. Again, it would have been something to work --

A No.

Q -- out --

A But staff will add that as staff has submitted in their testimony, let me say their rebuttal response, there were three options. And we were aware that the Coastal Commission had said some things that we also want to put out, but, again, that the Committee should consider, as



1 well.

2 HEARING OFFICER SHEAN: All right, I'm  
3 going to ask everyone to stop for the moment  
4 because there's some confusion, at least in our  
5 minds up here, when we consider bike path, what's  
6 accessible by public, what is not accessible by  
7 public, and what the proposed physical changes are  
8 about moving the fence and creating this.

9 So we'd like to go off the record, not  
10 quite yet, and have everyone, or at least a  
11 representative from various parties come up here.  
12 And we apparently do not have this in our record.

13 MS. MURPHY: Sorry, I don't know where  
14 it came from, it's --

15 HEARING OFFICER SHEAN: So we've marked  
16 this as Murphy/Perkins number 3.

17 MS. MURPHY: Okay.

18 HEARING OFFICER SHEAN: And the purpose  
19 of our little tete-tete up here at the front desk  
20 will be the following. With various colored pens  
21 to mark those portions of the bike path which are  
22 being used, but against the law, as pedestrian  
23 access from south to north, or north to south.

24 Then we'd like to mark also that portion  
25 of the area which is to be modified under the

1       landscape plan to include plantings or the  
2       widening of the area so that there's a new fence,  
3       along with benches and trees, so that we can  
4       understand what's happening where.

5               And then we'll come back onto the  
6       record. So, if we could have people, or at least  
7       a representative or two from the various parties  
8       come up here, we'd like to mark this exhibit.

9               MR. REEDE: May I suggest we also open  
10      up the landscape plan so everyone clearly knows  
11      where things are supposed to go, because if you  
12      don't have the landscape plan open when you're  
13      looking at that picture, you won't understand  
14      what's already proposed.

15              PRESIDING MEMBER PERNELL: I think what  
16      the Committee wants is a good clarification of  
17      just what's being proposed, whether that's the  
18      landscape plan or the picture, but that's the  
19      intent of Mr. Shean's comments.

20              MR. McKINSEY: I would echo that the  
21      landscape plan may better accommodate. It's much  
22      bigger, so there's lots of room for marking --

23              HEARING OFFICER SHEAN: Okay.

24              MR. McKINSEY: -- and it's got a lot  
25      more detail on it, rather than using the photo.

1 HEARING OFFICER SHEAN: All right. Off  
2 the record.

3 (Off the record.)

4 HEARING OFFICER SHEAN: Why don't we do  
5 this through Mr. Hamblin here. I'm going to hand  
6 you Murphy/Perkins exhibit number 3, and ask you,  
7 in light of the discussions we've just had with  
8 the landscape concept map and this photograph, to  
9 describe, first of all, the circled area appears  
10 to be rip-wrap that is within the property  
11 boundary of the project.

12 MR. HAMBLIN: Okay, circle area, what--

13 MR. REEDE: Right there.

14 MR. HAMBLIN: Oh, this is a circle?

15 Okay. So, are we talking about on the right --  
16 left-hand side of the photograph?

17 HEARING OFFICER SHEAN: Let me just say  
18 it's in the area -- it's the southwest corner of  
19 the property. It's the area that is east of the  
20 bike path and west of the tank farm.

21 Now, we understand that's to be removed.  
22 And that that portion is to be landscaped in  
23 accordance with the landscape planning that's part  
24 of our visual resources. Okay? And so can you --  
25 you can identify that that area is on that

1 exhibit?

2 MR. HAMBLIN: Yeah, rip-wrap to be  
3 removed.

4 HEARING OFFICER SHEAN: All right. And  
5 as a result of the discussions that were held  
6 during our off-the-record, that -- is it your  
7 understanding that the pedestrian access is  
8 prohibited for the length of the bike path along  
9 the western property line of the project?

10 MR. HAMBLIN: Correct.

11 HEARING OFFICER SHEAN: Or the El  
12 Segundo property?

13 MR. HAMBLIN: Correct.

14 HEARING OFFICER SHEAN: And that in our  
15 discussions it appears that there are physical  
16 constraints to, first of all, given that this bike  
17 path, itself, is not on property subject to the  
18 jurisdiction of the Energy Commission, and  
19 notwithstanding that, that there are physical  
20 constraints to the widening of the bike path to  
21 afford pedestrian access or a separate pedestrian  
22 path paralleling the bike path?

23 MR. HAMBLIN: Correct.

24 HEARING OFFICER SHEAN: And then as far  
25 as the applicant's property, there are physical

1 constraints for a pedestrian path on the applicant  
2 property in the area west of the retention pond,  
3 is that correct?

4 MR. HAMBLIN: Correct.

5 HEARING OFFICER SHEAN: And a little bit  
6 north of that there is a structure along the  
7 western edge of the property which would prevent a  
8 pedestrian access path in that portion of the  
9 property?

10 MR. HAMBLIN: Correct.

11 HEARING OFFICER SHEAN: Okay. Are there  
12 any other questions of this witness that would  
13 help establish what we had discussed off the  
14 record?

15 Okay. Well, the Committee has a fair  
16 amount to chew on here. And I think we understand  
17 the interest of the parties. But if you want to  
18 state or expand upon anything that you said we can  
19 do that briefly.

20 MS. MURPHY: I just want to say despite  
21 expressing my neighbor's worries about the park, I  
22 think the park, especially the narrow strip there  
23 that the public could access and sit on and look  
24 at things would be a good thing. I personally  
25 just want to say, it's a matter of sort of fears

1 and people's tastes and things, but I think a park  
2 there, as well as pedestrian access, would be a  
3 good thing.

4 PRESIDING MEMBER PERNELL: Thank you.

5 MR. PERKINS: But we should emphasize  
6 that we know because it was brought up strongly at  
7 workshops early in this matter that several of our  
8 neighbors, some of our neighbors, I don't know how  
9 many, feel differently about that. And they're --

10 MS. MURPHY: That was partly the  
11 previous park, the larger L-shaped park that was  
12 more facing --

13 MR. PERKINS: Well, that's true, --

14 MS. MURPHY: -- us, and this is a  
15 smaller, narrower, more beach access thing they'd  
16 less likely to be partying in.

17 People do sometimes party at that park  
18 next door that's in Manhattan Beach, and you see  
19 glass down there, you hear them at night, you call  
20 the police, and so. But this little strip of --

21 MR. PERKINS: And people on the beach is  
22 not really a drunk and disorderly problem so much  
23 as it's a health problem. If you get a little  
24 high and you're down there and you think you might  
25 go swimming, and it's midnight, you might be dead.

1 It does happen once in awhile.

2 HEARING OFFICER SHEAN: That's self-  
3 correcting behavior.

4 (Laughter.)

5 MR. MCKINSEY: I've got a procedural  
6 comment if we're done with that, too. But I don't  
7 know that we've actually put our testimony in the  
8 record on land, and I don't know if staff did or  
9 not--

10 HEARING OFFICER SHEAN: No, and I know,  
11 we're going to get to that.

12 MR. HANSEN: Yes, sir, I'd just like to  
13 briefly respond on the security question, not  
14 national security but local as in beach behavior  
15 and that sort of thing.

16 For the City of El Segundo and its  
17 portion of this portion of the beach, as well as  
18 the area below Grand, as well as the rest of the  
19 City, we have over 70 uniformed police officers.  
20 I believe we have the largest ratio of police  
21 officers per population in the whole State of  
22 California.

23 And are diligent about patrolling the  
24 five and a half square miles of the City. And I  
25 can -- you can rest assured that if there are any

1 security issues here associated with this area,  
2 they'll be very aggressively addressed. That's  
3 just a matter of fact throughout the City, and why  
4 we have such a low crime rate.

5 Thank you.

6 PRESIDING MEMBER PERNELL: Do they  
7 patrol the beach 24 hours?

8 MR. HANSEN: Sir, they, I'm sure, have  
9 periodic patrol of beach access areas and respond  
10 to calls for service. But as far as being on the  
11 beach, itself, I'm not aware of any of the  
12 cities -- I live in Hermosa -- that provides that  
13 sort of service.

14 HEARING OFFICER SHEAN: All right.  
15 Let's go through here and we had, let me sort of  
16 take this in reverse order since we had the  
17 Murphy/Perkins testimony. Is there objection to  
18 admission into evidence of their exhibits 1, 2 and  
19 3, which are photographs of, well, let's see --  
20 photographs of the beach and 45th, is it Street,  
21 and the rip-wrap on the southern end of the  
22 property and northern part of the Manhattan Beach  
23 beach. And lastly, an aerial view of the power  
24 plant, tank farm and a portion of the Chevron  
25 property.



1 MS. MURPHY: For clarification, the 45th  
2 Street view was referenced last night when I did  
3 the visual portion of the thing about gardening.

4 HEARING OFFICER SHEAN: Yes. Okay,  
5 hearing no objection, they're admitted.

6 Now we have to run through the applicant  
7 and staff testimony in this area. Why don't you  
8 identify, Mr. McKinsey, your appendix number and  
9 any other material you want admitted.

10 MR. MCKINSEY: Our appendix F provides  
11 our designated testimony in the area of land use.  
12 It also has a pretty good iteration of the  
13 generation of land conditions, and as they were  
14 modified from three submittals, December 23rd,  
15 December 31st and January 7th. So land is kind of  
16 chopped up quite a bit, and we indicate the  
17 conditions as we think they are that we've agreed  
18 to. And I don't think they've ever been published  
19 in a single document.

20 So that might actually be pertinent to  
21 make sure that staff agrees that we've got them  
22 right as to the conditions, the way we have them  
23 listed.

24 HEARING OFFICER SHEAN: Okay.

25 MR. REEDE: Yes.

1           MR. MCKINSEY:   And that's our testimony  
2   by declaration.

3           HEARING OFFICER SHEAN:   All right.  
4   Objection to admission?   It's admitted.

5           Staff?

6           MR. ABELSON:   For staff we have the land  
7   portion of the AFC -- excuse me, of the FSA.   We  
8   would also have, and these have already been  
9   identified, but they're probably sections within  
10   supplemental material that was filed and has  
11   already been accepted into the record of November  
12   1, 2002, December 13, 2002, and December 31, 2002,  
13   as well as the supplement on second response to  
14   comments and errata to the final staff assessment  
15   on land use dated January 6, 2003.   Now that one I  
16   don't recall if we'd entered before.

17          MR. REEDE:   Yes, we did.

18          MR. ABELSON:   Then, of course, there's  
19   our direct written testimony and our response  
20   testimony which is already in the record, but now  
21   as it would pertain to this topic area.

22          HEARING OFFICER SHEAN:   Okay, is there  
23   objection to admission of the enumerated list by  
24   staff?

25          PRESIDING MEMBER PERNELL:   Just one

1 clarification. Did you say November 1, 2002?

2 MR. ABELSON: Yes.

3 HEARING OFFICER SHEAN: Yes.

4 MR. NICKELSON: Can I ask a question  
5 about land-6 and 8?

6 HEARING OFFICER SHEAN: Stand by.

7 Hearing no objection to the admission into  
8 evidence, those are admitted.

9 Yes, quickly.

10 MR. NICKELSON: There was a request in  
11 December, you know, to add to the land that the  
12 tank farm, once it's been -- the tanks have been  
13 removed and it's been paved, that it can't be used  
14 for anything but bringing in equipment when it's  
15 needed or parking area, but not for storage of  
16 equipment pipes and things that, you know, could  
17 be added, you know, with the -- that was brought  
18 into land-6.

19 Mr. Reede had then saying that he was  
20 going to change that to land-8, because it was  
21 more appropriate, maybe putting that in the tank  
22 farm?

23 MR. REEDE: Yes, that was corrected  
24 quite awhile back.

25 MR. NICKELSON: Okay. It still shows

1       this is in land-6.

2               MR. REEDE:  It's actually land-4 because  
3       of the renumbering.  See, land-1, 2 and 3 were  
4       combined into land-1.  And so --

5               MR. MCKINSEY:  Four became 2.

6               MR. REEDE:  -- the numbering sequence  
7       changed and everyone was given copies of the  
8       changed numbering.

9               MR. NICKELSON:  Okay.

10              MR. REEDE:  And that's what all parties  
11      agreed to.

12              MR. NICKELSON:  I just wanted to add one  
13      thing is that if you take a look at Scattergood,  
14      if you went down Grand Avenue, that it's a  
15      junkyard.  And that's all it is.

16              And I want to thank the staff for making  
17      that change, adding that so that it can't be used,  
18      because that would be, you know, in our direct  
19      line of sight, looking down.  And this is just  
20      another situation where staff and also the  
21      applicant was amiable to this, but where staff  
22      stepped in and took care of it.

23              And I'd like to thank Mr. Reede and let  
24      you know that this is much appreciated by those  
25      who live there.

1                   PRESIDING MEMBER PERNELL: Thank you.

2                   HEARING OFFICER SHEAN: Well, I think  
3                   it's worth stating for the record, given the  
4                   number of uncontested areas that we went through  
5                   this morning when we first launched, that the  
6                   staff, the applicant, the local jurisdictions, the  
7                   City of El Segundo, the City of Manhattan Beach,  
8                   the local residents and other local agencies and  
9                   interested parties who have not chosen to  
10                  intervene, that have put in a yeoman's effort to  
11                  get that much of this proceeding agreed to amongst  
12                  the parties, is an outstanding effort.

13                  And the Committee commends everyone for  
14                  their effort in doing that.

15                  MR. REEDE: Excuse me, Hearing Officer  
16                  Shean. I have a couple housekeeping items.

17                  HEARING OFFICER SHEAN: Okay.

18                  MR. REEDE: Over the past two years the  
19                  City of El Segundo has allowed us to use their  
20                  City Council Chambers for 19 workshops at no cost  
21                  to the Commission.

22                  And from Energy Commission Staff we are  
23                  very grateful for allowing us to use their  
24                  facilities. And I would ask that the full  
25                  Commission thank the City of El Segundo formally

1 for their allowing us to use their facilities free  
2 of charge, so that it's on the record.

3 HEARING OFFICER SHEAN: When we get the  
4 matter before the full Commission we'll do that.

5 PRESIDING MEMBER PERNELL: We will  
6 certainly do that. I would just echo Mr.  
7 Reede's -- for the City of El Segundo, Mr. Reede's  
8 comments, as well as Mr. Shean's comments for  
9 everybody that participated in this process.

10 And we really want to thank you all,  
11 especially, and this goes to those community folks  
12 that are not really involved in these type of  
13 processes, I really want to thank you for coming  
14 and not being intimidated, speaking your mind.  
15 And judging from some of the uncontested items, I  
16 think you did very well.

17 So, I really want to thank you for that.  
18 And also recognizing that staff is accessible and  
19 doing a good job. I mean Commissioners really  
20 want to hear that, because it's a reflection of  
21 the entire Commission.

22 So, with that, if there's -- there is  
23 one other thing. Mr. Shean.

24 HEARING OFFICER SHEAN: We need to check  
25 to see if there are any members of the public who

1 would like to speak during this period that we  
2 have particularly reserved for public comment.

3 MS. MURPHY: As a member of the public  
4 I'd like to speak.

5 HEARING OFFICER SHEAN: Sure.

6 MS. MURPHY: Okay. I just have a few  
7 comments and I hope I'm not, in this feel-good  
8 thing, I'm not changing the mood, because I have  
9 enjoyed this process. They say you shouldn't  
10 watch laws being made, but I watched this process  
11 into something of a law being made, and it's been  
12 pleasurable.

13 But a few things I wanted to say. First  
14 of all, I wasn't here at the last prehearing,  
15 maybe that's why there was some problem about  
16 raising this issue that I thought had been raised  
17 before in my testimony and previous times, because  
18 I was taking care of an aunt who had lung cancer  
19 surgery. She also has moderate to severe COPD.  
20 She came and stayed with us for awhile.

21 My mother died of COPD. I have an uncle  
22 that died of then they called it emphysema, and a  
23 grandfather who died of it.

24 When you're thinking in terms of health  
25 impacts to people I know it's a statistic, it's

1 not a real person, but it's possible that I'm that  
2 person. I foolishly smoked for ten years in my  
3 youth, and now I live next to a power plant.

4 I just want to say that I can't move  
5 anyplace else in L.A. because it's probably better  
6 air here next to this power plant than it is other  
7 places, but when you make these considerations  
8 about health, and I think that you are supposed to  
9 make considerations about health, that you  
10 consider that there are actual people. And, in  
11 fact, I am thinking that I might be one of those  
12 people that may have my life shortened because of  
13 where I live.

14 Secondly, I felt hurried at times in  
15 this process, both in earlier hearings and again  
16 yesterday, last night. It seems like the public,  
17 and we're not familiar with the process and what  
18 we're supposed to do, are often put off to the  
19 end, and many times we were told hurry up because  
20 we got to catch a plane, or you get five minutes  
21 at the end of this hearing to talk about it.

22 And this sort of happened yesterday,  
23 too, so that I wasn't able to do some of the  
24 things I had intended to do with the witnesses  
25 that were here. But this is a procedural matter,



1 too.

2 It seems to me that you are, the staff,  
3 somebody is hiding the ball about credits. Maybe  
4 it's AQMD, too. When they first were brought up  
5 some of them were confidential because they were  
6 still in the process of being discussed.

7 And then Mr. Loyer in his final thing  
8 said, they've all been purchased so we don't need  
9 to tell you where they're purchased. It seems to  
10 me the public has a right to know. And the  
11 Commission ought to let us know exactly what  
12 credits you bought, exactly when, exactly where.

13 Since then Bob and I have tried to email  
14 and call the AQMD, and I guess it's hard to find,  
15 I'm not sure. And the problem is, it's like the  
16 applicant with its 316B like study, if you don't  
17 do it it looks like you're hiding something. And  
18 if you showed us all the credits it wouldn't make  
19 me feel so much like something's being hidden here  
20 that I shouldn't know.

21 I have a few other things, but mostly  
22 I've enjoyed this process. The public, you've  
23 only seen a few of us here, but when this began  
24 there were as many as 20 or 30 people that would  
25 come to these --

1 MR. REEDE: Yeah, with wine and cheese  
2 at her house.

3 MS. MURPHY: That's right. And we --

4 MR. REEDE: We did our outreach.

5 MS. MURPHY: -- hoped that we had -- not  
6 too much wine, though, James -- we hope that we  
7 tried to reflect their concerns and interests  
8 expressed earlier. And they kind of said, okay,  
9 go for it, you know, without forming an  
10 organization.

11 I feel a little guilty because I know  
12 that other power plants have had huge  
13 organizations and, you know, -- but I think that  
14 you should keep in mind that we reflect the  
15 concerns of a great many people of 10 million  
16 people that live in L.A.

17 So, thank you.

18 PRESIDING MEMBER PERNELL: Thank you.

19 HEARING OFFICER SHEAN: Thank you.

20 PRESIDING MEMBER PERNELL: And just one  
21 final comment, I would be remiss if I didn't thank  
22 the applicant for providing this meeting room for  
23 us over these last three days. Thank you for  
24 that.

25 MR. MCKINSEY: You're welcome.

1           PRESIDING MEMBER PERNELL: Is there  
2 anything else that anyone would like to say?  
3 Staff, applicant, intervenors? Mr. Shean?

4           HEARING OFFICER SHEAN: I'd just like to  
5 say let's adjourn.

6           (Laughter.)

7           MR. ABELSON: Well, I guess I do have a  
8 question. Is there not a schedule that needs to  
9 be announced for briefings or whatever?

10          HEARING OFFICER SHEAN: We don't have a  
11 schedule. What we're going to do is go back to  
12 the Commission; examine what our record looks  
13 like. Mr. Fleischli asked me yesterday, because  
14 he was somewhat concerned about not being present  
15 for the second half of yesterday and today, but I  
16 knew at the time that we had nothing in particular  
17 to announce.

18          But I think what we're going to do is,  
19 as I say, go back, see -- the most likely thing is  
20 at some point we're going to come back with a  
21 briefing order which would allow the parties to  
22 address, from a prepared transcript, any legal  
23 authorities or actual argument that they wish to  
24 make. And will probably be not only an initial  
25 brief, but a reply brief. So you can anticipate

1       that.

2               MR. ABELSON:  Just to get just a sense,  
3       not so much of the date, because I understand what  
4       you're saying that you need to go back, among  
5       other things, and look at where you're at to  
6       establish that sort of schedule.

7               But typically from the announcement time  
8       that you all provide, is it common with the  
9       Commission practice to forward two days, three  
10      weeks for briefs, two months?  Just so we have  
11      just an --

12              HEARING OFFICER SHEAN:  Well, generally  
13      the preparation of the transcripts of these  
14      proceedings is taking on the order of two weeks,  
15      okay.  So, at best, that's when you would have the  
16      resources to begin.

17              So let us work with those facts and we  
18      can tell you.  We're not going to jam anybody.  If  
19      that's the assurance you want, we're not going to  
20      do that.

21              As we know from this proceeding, this  
22      aquatic biology issue is detailed; it's important;  
23      and one that the Commission has had to wrestle  
24      with in both prior decisions, pending cases, and  
25      in cases that are even trailing us.

1           So, it's a major matter; we're not going  
2           to rush it. And when we can, we'll get the  
3           specifics out to you in terms of a briefing  
4           schedule.

5           MR. ABELSON: Thank you.

6           PRESIDING MEMBER PERNELL: All right,  
7           anything else?

8           Hearing none, this Committee is  
9           adjourned. Thank you, all, again. We're off the  
10          record.

11          (Whereupon, at 11:25 a.m., the hearing  
12          was adjourned.)

13                       --o0o--

## CERTIFICATE OF REPORTER

I, JAMES RAMOS, an Electronic Reporter,  
do hereby certify that I am a disinterested person  
herein; that I recorded the foregoing California  
Energy Commission Hearing; that it was thereafter  
transcribed into typewriting.

I further certify that I am not of  
counsel or attorney for any of the parties to said  
hearing, nor in any way interested in outcome of  
said hearing.

IN WITNESS WHEREOF, I have hereunto set  
my hand this 2nd day of February, 2003.

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345